

INDEX.

	Page.
Affidavits in Opposition to Entry of Judgments....	58-62
Allowance of Writ of Error from U. S. Supreme Court	103
Allowance of Writ of Certiorari from State Supreme Court	91
Amended Order of Confirmation	23-26
Appeal to State Supreme Court	23-27
Assignment of Errors in State Supreme Court....	92-102
Award of Jury (Disagreement) on First Trial.....	15
Award of Jury on Second trial.....	15-18
Award of Jury on Third Trial.....	49-50
Decision of State Supreme Court Ordering New Trial of Question of Compensation.....	27
Decision of State Supreme Court Affirming Judgments Against Respondents	103
Judgments Against Respondents	63
Levies Under Executions	72-74
Mandamus Proceedings	12
Motion for Entry of Judgments.....	50-51
Motion for New Trial.....	18
Motion to Proceed to Third Trial.....	29
Motion to Dismiss Writ of Error.....	1-3
Notice of Motion for Entry of Judgments.....	50-51
Notice of Petition to Condemn	14

ii.

Notice of Settlement of Order of Confirmation.....	20
Notice of Writ of Error	103
Oath of Jurors	43
Oath of Sheriff	38
Objections by Respondents to Third Trial.....	31-38
Objections by Respondents to Entry of Judgments	52-57
Order of Confirmation	20-23
Order of Confirmation, as Amended.....	23-26
Order of Circuit Court Vacating First Award.....	19
Order of State Supreme Court Vacating Award of Compensation and Ordering New Appraisement	27-28
Order of State Supreme Court Affirming Judg- ments	103
Petition to Condemn Right of Way.....	3-14
Petition of Respondents for Writ of Certiorari....	80-89
Possession Taken	27
Praecipe for Writs of Execution	70
Proceedings When Jury were Impaneled.....	45-49
Taxation of Costs	66-70
Tender and Payment	26
Writ of Certiorari	90-91
Writs of Execution	71-80

UNITED STATES OF AMERICA.

Supreme Court of the United States.

ABSALOM BACKUS, JR., and
A. BACKUS, JR., & SONS,
Plaintiffs in Error.

vs.

THE FORT STREET UNION DEPOT
COMPANY,
Defendant in Error.

Error to Supreme Court of
Michigan.

MOTION TO DISMISS WRIT OF ERROR.

And now comes the Fort Street Union Depot Company, by Fred A. Baker, its attorney, and moves the court to dismiss the writ of error in this cause, and for the following reasons:

1. The final judgment or decree in this cause in the Supreme Court of Michigan was not rendered in a suit in which was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and there was no decision in the court below against the validity of any such treaty, statute, or authority.

2. The final judgment or decree in this cause in the Supreme Court of Michigan was not rendered in a suit in

which was drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the constitution, treaties or laws of the United States, and there was no decision in the court below in favor of the validity, as against the constitution, treaties and laws of the United States, of any statute of, or authority exercised under, any State.

3. The final judgment or decree in this cause in the Supreme Court of Michigan was not rendered in a suit in which any title, right, privilege or immunity was claimed under the constitution, or any treaty or statute of, or commission held or authority exercised under, the United States, and there was no decision against any title, right, privilege or immunity specially set up or claimed by either party under such constitution, treaty, statute, commission or authority.

4. No Federal question was presented, raised, argued, or decided in the court below, and no such question was involved in the case in the court below.

5. The Supreme Court of the United States has no jurisdiction in this cause.

6. The writ of error in this cause was improvidently allowed and issued.

This motion is based upon the files and record in this cause, printed copies of so much of the same as are necessary to dispose of this motion being herewith submitted.

FRED A. BAKER,

Attorney for Defendant in Error.

To Dickinson, Thurber & Stevenson, Attorneys for Plaintiffs in Error:

Gentlemen—You will please take notice that on Monday, the 14th day of October, 1895, at the opening of the Supreme Court of the United States on that day, or as soon thereafter as counsel can be heard, the above and foregoing motion to dismiss the writ of error in the above

entitled cause will be submitted to said court. You are herewith served with copies of the printed record and brief which will be submitted to the court in support of said motion.

Detroit, September 7, 1895.

FRED A BAKER,

Attorney for Defendant in Error.

RECORD IN COURT BELOW.

PETITION AND NOTICE.

STATE OF MICHIGAN—To THE CIRCUIT COURT FOR
THE COUNTY OF WAYNE

Your petitioner, the Fort Street Union Depot Company, respectfully represents:

1. That your petitioner is a railroad corporation, organized under an act entitled, "An act to authorize the incorporation of companies for the construction of union railroad depots and stations, with the necessary connecting tracks, and the management of the same," approved June 9, 1881, and the amendments thereto; that your petitioner heretofore, to wit, on the 24th day of August, 1889, was duly incorporated by the filing of its articles of association, and annexed affidavit, in the office of the Secretary of State, as required by said act.

2. That the capital stock of your petitioner has been in good faith subscribed, as required by said act, to organize such company; that is to say, the capital stock of your petitioner is fixed by said articles of association at the sum of one million dollars, which was not less than the estimated and probable cost of your petitioner's proposed station grounds, depot buildings and railroad tracks proposed to be laid; that more than fifty per cent. of said capital stock was subscribed upon said articles of association, and

ten per cent. was in good faith in cash paid in to the directors named in said articles, and an affidavit was made and attached to said articles by William W. Crapo and George Coppell, two of said directors, showing that said amount had been subscribed and ten per cent. in cash paid in as aforesaid.

3. That your petitioner has surveyed its depot grounds and the route of its proposed tracks in the county of Wayne, and made a map and survey thereof, by which said depot grounds and route are designated, and that it has located the same according to such survey, and filed a certificate thereof, indorsed on such map and survey, and signed by a majority of the directors of said company, in the register's office of said county of Wayne, to wit, on the 12th day of November, 1889; that before filing said map and survey, to wit, on the 22d day of October, 1889, your petitioner submitted the same to the State Railroad Crossing Board, consisting of the Commissioner of Railroads, Attorney-General and Secretary of State, for approval, in compliance with section seven of the general railroad law of this State, as amended by act No. 236 of the Public Acts of 1887, p. 294; that thereupon such proceedings were had that afterwards, to wit, on the 8th day of November, 1889, said map and survey was duly approved by said board, and a certificate of such approval indorsed thereon, and said map and survey, so certified and approved, now remains of record in the said register's office for the county of Wayne, and to which record reference is hereby made.

4. That the route of the proposed tracks of your petitioner, as shown by said map and survey, lies upon and along River street, in said city of Detroit, from a point at or near Twelfth street to a point at or near Eighth street, and the terms and conditions under which your petitioner is to construct its said tracks upon and along said River street, have been agreed upon between the Common Coun-

oil of the city of Detroit, and your petitioner, as shown by the following ordinance adopted by the Common Council and accepted by your petitioner:

COPY OF ORDINANCE.

"Whereas, The Fort Street Union Depot Company is a corporation under the laws of this State, for the construction of a Union Depot on the southwest corner of Third street and Fort street west, in this city, and said company, for the purpose of furnishing access to said Union Depot, propose to build an elevated railroad in, upon and along River street, from the west line of the Thompson farm to the east line of lot number ten (10) of the Labrosse farm; thence northeasterly to a point south of Fort street, north of Congress street and west of the west line of Seventh street; thence across Seventh, Sixth, Fifth and Fourth streets, between Fort and Congress streets; and,

Whereas, The act under which said Depot Company is organized provides that the terms and conditions under which said elevated railroad may be constructed in any street shall be agreed upon between the company and the Common Council; and,

Whereas, The construction of said road may render it necessary to vacate Fourth, Fifth, Sixth or Seventh streets, between Fort and Congress streets, or to change the grade of Sixth or Seventh streets; therefore,

Section 1. It is ordered that the terms and conditions for the construction of said railroad along River street shall be as follows:

That is to say, the superstructure of said elevated railroad shall be supported by iron posts not more than 15 inches square or in diameter; that said posts shall be set along the line of the curbing now in said highway, and outside of the roadway and curbing, so that the super-

structure will span the entire roadway or paved portion of said highway; said posts shall be not less than 30 feet apart along said curb lines, except in crossing the Michigan Central Railroad, where they shall be so placed as to be most convenient for both roads; said posts shall rest wholly upon solid foundations of masonry wholly beneath the surface of the street, and such posts shall be of such length that at no point on the line of the said road shall the space between the surface of said River street, or any street leading into said River street, and the superstructure be less than 13 feet in the clear, and no posts shall be placed within or between the curb lines of any street leading into or intersecting said River street, or within the lines of the sidewalk upon such intersecting streets.

In case said roadway shall be constructed across and over any of the said Fourth, Fifth, Sixth or Seventh streets, the superstructure shall be supported either by stone walls, erected on the street lines, or by iron posts not more than 15 inches square or in diameter, which shall be set so as to span the entire roadway of said streets, and none of which shall be set between the curb lines of either of said streets, or within the sidewalk lines thereon; the said posts shall rest upon solid foundations of masonry wholly beneath the surface of said streets, and at no point on either of said streets, provided the roadway shall be constructed over either of said streets, shall the space between the surface of the street and the superstructure be less than 13 feet clear under said structure; and,

The superstructure shall consist of iron and steel girders and ties, having an aggregate height of five feet, substantially as shown on the "cross section" thereof, filed by said company with the city clerk, with a map showing the route of said railroad along said River street and the location of the posts for the support, and which

said cross section and map are made a part of this ordinance.

Suitable iron pans or shields to catch the ashes and refuse from locomotives shall be constructed upon the tracks of said elevated railroad, on and along River street, and over any other street above which said roadway shall be constructed. And the said company shall cause to be properly lighted to the satisfaction of the Board of Public Works the said River street under said superstructure, and any street crossing over which said roadway may be constructed.

Sec. 2. The said company shall keep the posts and superstructure of said elevated railroad in good order and repair, and in constructing the same shall obstruct the streets for a reasonable time only.

Sec. 3. In case the Common Council should, in its discretion, at any time hereafter resolve and determine to vacate the said Fourth, Fifth, Sixth and Seventh streets, or either or any of them, and take the necessary steps and proceedings to vacate the said streets or either of them, and the same or either of them should be vacated, the said Fort Street Union Depot Company shall pay all the costs and expenses of such proceedings, and shall pay all damages which may be awarded in said proceedings to any person or persons by reason of such vacation.

Sec. 4. In case the said roadway should be constructed by said company over the said Fourth, Fifth, Sixth or Seventh streets, or over either of said streets, at a height leaving a space less than 13 feet in the clear between the present surface of such street and the superstructure of said roadway, and the Common Council should, in its discretion, at any time hereafter, resolve and determine to change the grade of either or any of said streets and the same be changed, the said Fort Street Union Depot Company hereby agree to pay all the costs

and expenses of such change and alteration of grade, and to pay all damages that may be awarded to any person or persons by reason of change of grade, and fully to indemnify the city against any and all claims, awards or judgments that may be recovered against the city by reason of such change of grade.

Sec. 5. The said company shall acquire by purchase or condemnation, from the adjoining property owners, the right to build said elevated railroad in said street as required by the constitution and laws of the State.

Sec. 6. In consideration of the police and fire protection, and in lieu of local taxes, the said company shall, and it hereby agrees to pay to the city treasurer, on or before the 1st day of July in each year, two and one-half per cent. of the gross earnings of said company, as determined by the State Railroad Commissioner and Auditor General, in pursuance of sections 19, 20 and 21 of the Union Depot Act of 1881. Provided, that if by any change in the constitution or laws of this State, the company should hereafter be required to pay local taxes, then the company is to be credited upon the percentage herein stipulated, with the amount of local taxes it may be required to pay.

Sec. 7. The said company shall within thirty (30) days after the passage of this ordinance file a written acceptance of the terms and conditions thereof with the city clerk, and shall procure from the owner or owners thereof, a deed to the city of Detroit, dedicating to the public use as a street, all that parcel of land in the City of Detroit, in the County of Wayne and State of Michigan, from River street to the channel bank of the Detroit river, included between the lines of Twelfth street extended, except the part thereof owned by the Michigan Central Railway Company, and the same to be kept open and clear

for public use, and shall cause said deed to be filed with the controller of the city; and

Said company shall execute and deliver to the City of Detroit, a good and sufficient bond, in the penal sum of \$500,000, to be approved by the Common Council, conditioned for the faithful performance of the terms and conditions of this ordinance, and to fully indemnify and save harmless the City of Detroit, from any and all claims for damages for which said city may be made or become liable to pay, by reason of the construction, maintenance or operation of said railroad or superstructure. This ordinance shall take effect upon the filing of said acceptance, the delivery of said deed and the approval of said bond."

5. That at the time of approving the map and survey of your petitioner, to wit, on the 8th day of November, 1889, the State Railroad Crossing Board made an additional and further order requiring the Michigan Central Railroad Company and the Fort Street Union Depot Company to construct and maintain at their joint and equal expense, an overhead passage-way for teams and travelers on foot, at the crossing of River street by the tracks of the Michigan Central Railroad, and afterwards, to wit, on the 30th day of April, 1890, the Commissioner of Railroads, in his separate official capacity, made an order to the same effect and caused the same to be served on each of said companies. Reference is hereby made to said orders as they remain of record in the office of the Commissioner of Railroads. That each of said orders reserved to the Commissioner of Railroads the power to approve of the plans of the superstructure of the viaduct or elevated railroad to be erected in River street at said railroad street crossing by your petitioner, and also of the plans of the superstructure of the passageways for teams and travelers on foot, to be erected by the Michigan Cen-

tral Railroad Company and your petitioner at their joint and equal expense.

6. That afterwards, to wit, on the 15th day of July, 1890, your petitioner submitted plans for the construction of said overhead crossings to the Hon. John T. Rich, Commissioner of Railroads, for his approval, and after a full hearing thereon, he did approve of said plans, and indorsed his approval thereon, and filed the same so indorsed in the office of the Commissioner of Railroads; and he also delivered a duplicate original of said plans and indorsement to your petitioner, and the same are now in its possession, ready to be produced and proven as the Court may direct.

7. That your petitioner has also prepared and adopted plans for the construction of its proposed viaduct or elevated railroad in said River street from a point near Twelfth street to a point near Eighth street, and said plans conform to the said ordinance, the orders of the State Railroad Crossing Board and of the Commissioners of Railroads, and the crossing plans approved by the Commissioner of Railroads.

The plans so adopted by your petitioner are made a part of this petition, and a copy thereof is herewith filed and served.

8. That your petitioner desires to build said viaduct or elevated railroad and to construct the same in accordance with the terms and conditions, and in full compliance with all of the requirements, of the ordinance agreed upon between the Common Council of the City of Detroit and your petitioner as aforesaid, the orders of the State Railroad Crossing Board and of the Commissioner of Railroads, the crossing plans approved by the Commissioner of Railroads, and the general plans designed and adopted by your petitioner as aforesaid.

That your petitioner also desires, and holds itself in read-

iness, to join with the Michigan Central Railroad Company in the construction of said passageways for teams and foot travelers, and to pay its half of the cost and expense thereof.

9. That the Michigan Central Railroad Company owns all the property on the south side and some of the property on the north side of River street, between Twelfth street and Third street, and your petitioner has acquired from the Michigan Central Railroad Company, by due condemnation proceedings, the right to construct said viaduct or elevated railroad along said River street, as herein proposed, and your petitioner now desires to acquire the like right from the owners of the remaining property on the north side of said street, in front of said proposed viaduct or elevated railroad.

10. That of the property so situated on the north side of said River street, one parcel is known as the Backus Box Factory and Planing Mill. This property has a frontage on River street of two hundred and thirty-eight and 6.100 feet, and it extends from River street the same or a greater width to Fort street west and the right of way of the Michigan Central Railroad Company. The River street frontage of the property is bounded on the west by a lot owned or known as the property of Barbara Steadley, and on the east it is bounded by a strip of land seventeen feet wide, owned and occupied by the Michigan Central Railroad Company.

11. That the names and places of residence of the parties, so far as the same can with reasonable diligence be ascertained, who own, or have or claim to own, or have estates or interests in said lands and property are as follows:

The property is owned in fee by Absalom Backus, Jr., of Detroit, in said county, and it is in possession of a corporation known as "A. Backus, Jr., & Sons," also of De-

troit, in said county, as the tenant for a term of years of said owner.

The estate of the late Crozier Davison is interested in a portion of said property under a land contract executed by the deceased to Absalom Backus, Jr., to the amount of about fifteen thousand dollars, and this interest, which is in the nature of mortgage, is held by James N. Dean, of Detroit, and William H. Davison, of Greenfield, in said county, as executors and trustees under the will of said Crozier Davison.

12. That your petitioner seeks to acquire under this petition, in the county of Wayne, and from the said owners, and others above named who own or have or claim to own, or have or claim to have estates or interests in the lands and property above described, the following real estate, property, easements, rights and franchise, that is to say:

I.

The right of way to construct and maintain said viaduct or elevated railroad in, upon and along River street, and in front of the above described property, in accordance with the ordinance agreed upon between the Common Council of the city of Detroit and your petitioner as aforesaid, the orders of the State Railroad Crossing Board and of the Commissioner of Railroads, the plans approved by the Commissioner of Railroads, and the general plans designed and adopted by your petitioner as aforesaid.

13. That all of the real estate, property, franchise and easements set forth and described in the preceding paragraph of this petition are required by your petitioner for the purposes of its incorporation and the taking thereof is necessary for the public use; that the Union Depot and station grounds proposed by your petitioner, and the proposed railroad tracks connecting therewith, are a necessary public improvement, and public necessity requires

that all of said real estate, property, franchises and easements, and all of the estate, right, title and interest of the said owners and others interested therein, as herein described and set forth, should be taken for said improvement and for the use and benefit of the public.

14. That your petitioner has not been able to acquire title to the said real estate, property, franchises and easements, and that the reason of such inability is this, that your petitioner has been unable to agree with the said Absalom Backus, Jr., and A. Backus, Jr., & Sons for the purchase thereof, there being a great difference between them and your petitioner as to the price or compensation that your petitioner ought justly to pay for the same.

PRAYER.

Your petitioner prays that an order may be granted by the Court appointing three disinterested and competent freeholders, as Commissioners under the Constitution and Laws of this State, to ascertain and determine the public necessity for taking said real estate, property, franchises and easements for the purposes of your petitioner and the public use and benefit, as aforesaid, and to appraise and determine the damages or compensation to be allowed to the said owners of, and parties interested in, the said real estate, property, franchises and easements, so proposed to be taken.

F. A. BAKER,
Attorney for Petitioner.

STATE OF MICHIGAN,
COUNTY OF WAYNE,

} ss.

On the 24th day of January, 1891, before me, a notary public in and for said county, personally appeared Fred A. Baker, the person who signed the above and foregoing

petition, and made oath that he is the attorney for said petitioner, and signed said petition on its behalf; that he has read said petition and knows the contents thereof, and the same are true of his own knowledge, except the matters and things therein stated to be on information and belief, and as to those he believes the same to be true.

WILLIAM E. FENWICK,
Notary Public, Wayne County, Michigan.

To Absalom Backus, Jr., A. Backus, Jr., & Sons, and James N. Dean, William H. Davison, Executors and Trustees, etc.:

You will please take notice that on Monday, the 7th day of February, 1891, at the court room in the City Hall, in the city of Detroit, at the opening of court on that day, or as soon thereafter as counsel can be heard, a petition of which the within and foregoing is a true copy, will be presented to the Circuit Court for the County of Wayne, and at which time and place you are required to show cause, if any you have, against the prayer of said petition.

Detroit, January 24th, 1891.

F. A. BAKER,
Attorney for Petitioners.

SERVICE OF PROCESS.

More than ten days before the 7th day of February, 1891, a copy of the foregoing petition and notice was personally served on each of the respondents therein named, as required by the Michigan statute under which the petition was filed.

1 How. Stat., p. 890, §3464.

PROCEEDINGS ON PETITION.

On the day named the respondents appeared before the court by Dickinson, Thurber & Stevenson, their attorneys,

and showed cause why the petition should not be granted, but the court being of the opinion that the cause shown was not sufficient, granted the prayer of the petition.

Thereupon the respondents, by their said counsel, demanded, as provided in the statute, a jury of twelve freeholders of the county to determine the public necessity for taking the property described in the petition and to appraise and determine the damages or compensation to be allowed therefor.

1 How. Stat., p. 891, §3465.

A jury of twelve freeholders were duly impaneled and sworn, and a hearing was had before them, and a large number of witnesses were sworn, but the jury were unable to agree on a verdict, and so reported to the Court.

Another jury was then impaneled and sworn. Both parties having been heard, this jury agreed upon the following award, which was duly reported to the Court:

AWARD OF JURY.

STATE OF MICHIGAN—IN THE CIRCUIT COURT FOR
THE COUNTY OF WAYNE:

THE FORT STREET UNION DEPOT
COMPANY

vs.

ABSALOM BACKUS, JR.,
A. BACKUS, JR., & SONS,
JAMES N. DEAN, and
WILLIAM H. DAVISON,

Respondents.

To said Court:

We, the undersigned, inhabitants and freeholders of the County of Wayne, duly impaneled and sworn as jurors in this cause to ascertain the necessity of taking for public

use, to wit, for the purpose of constructing a union railroad depot and station grounds in the City of Detroit, in said county, with the necessary connecting railroad tracks and accommodation, all of the real estate, property, franchises, rights, easements and privileges described in the petition in this cause, and to ascertain and determine the compensation or damages which ought justly to be made by the Fort Street Union Depot Company to the above named respondent therefor, do respectfully certify and report that we met at the court room in the market building in the City of Detroit, on the 8th day of June, 1891. That the Fort Street Union Depot Company appeared by F. A. Baker, its attorney, and the respondents appeared by Don M. Dickinson and J. Logan Chipman, their attorneys. That we proceeded to hear the proofs and allegations of the parties, and also proceeded together to view the premises proposed to be taken, and for that purpose we continued our sessions from day to day until the 16th day of July 1891, when this cause was submitted to us by said parties. That we caused the testimony and arguments of counsel before us to be stenographically reported and reduced to writing at the request of the parties, and the same are herewith returned and filed.

After said cause was submitted to us, having maturely considered the proofs and allegations of the parties and the arguments of counsel thereon, we did ascertain and determine that public necessity requires that said real estate, property, franchises, easements and privileges should be taken for public use, to wit, for the purposes of constructing, maintaining and operating a Union Railroad Depot and Station Grounds in the City of Detroit, in said county, with the necessary connecting railroad track and accommodation by the Fort Street Union Depot Company, under its articles of association and the constitution and laws of this State.

And thereupon we did further ascertain and determine that the compensation or damages which ought justly to be paid by the Fort Street Union Depot Company to respondents for the said real estate, property, franchises, easements and privileges as described in the petition in this cause is as follows:

To Absalom Backus, Jr., as the owner of the fee of a parcel of land hereinafter described, the sum of seventeen thousand eight hundred and fifty dollars.

To A. Backus, Jr., & Sons, a corporation as the tenants in possession of said parcel of land, the sum of seventy-eight thousand two hundred and ninety-three dollars.

To James N. Dean and William H. Davison, executors of the estate of Crosier Davison, deceased, the sum of one dollar.

The real estate, property, franchises, rights, easements and privileges referred to in this award are more particularly known and described as the right of way to construct and maintain a viaduct or elevated railroad in, upon and along River street and in front of the property in which the respondents are interested as owners or otherwise, in accordance with the ordinance agreed upon between the Common Council of the City of Detroit and the petitioners, the orders of said railroad crossing board and of the commissioner of railroads, and the general plans and designs adopted by the petitioners and as approved by the State railroad commissioner, which were filed and served with and constitute a part of the petition in this cause.

The property in which the respondents are interested as owners or otherwise, in front of which said viaduct or elevated railroad is to be constructed or maintained, is situated on the north side of River street, in the City of Detroit, in the County of Wayne, and is bounded and described as follows: Bounded on the westerly side by a parcel of land owned by Barbara Steadley, and on the

northerly side by Fort street west and the Michigan Central Railroad, on the easterly side by a strip of land seventeen feet wide owned by the Michigan Central Railroad Company, and on the southerly side by River street, formerly known as Woodbridge street. Said property is known as the Backus Planing Mill and Box Factory, and it has a frontage on River street of two hundred and thirty-eight and forty-hundredths feet.

(Signed) J. H. Leshner, P. H. Hickey, Joseph C. Wallich, Felix Julien, John Kelly, William M. Quemby, Eugene Charest, Maxine J. Rivard, Christian M. Traub, Patrick Spillane, Leopold Freud.

TESTIMONY.

The stenographic report of the testimony and arguments of counsel accompanying the above award covers over 1,400 printed pages. As no question arises in this Court on the testimony it is not here printed.

MOTION FOR NEW TRIAL.

The petitioner being dissatisfied with the damages or compensation awarded by the jury, entered a motion for a new trial. Affidavits were filed in support of and against this motion. The motion was argued before Hon. Geo. Gartner, Circuit Judge, and was granted by him, as shown by the following:

ORDER VACATING AWARD.

October 26th, 1891.

THE FORT STREET UNION DEPOT
COMPANY

vs.

ABSALOM BACKUS, JR., et al.

Before Judge Gartner.

In this cause the motion of said complainant for an order of the Court setting aside the award heretofore made by the jury in said cause, and for the impaneling of another jury in said cause having been heretofore argued and submitted after due consideration thereon, it is ordered that the award heretofore made by the jury impaneled in said cause and entered therein be and the same hereby is set aside and held for naught. And it is further ordered that a new jury be impaneled in said cause in accordance with the statute governing said proceedings.

(Signed) GEO. S. HOSMER,
Presiding Judge.

MANDAMUS PROCEEDINGS.

The foregoing order was vacated by a writ of mandamus issued by the Supreme Court of the State.

Backus vs. Gartner, 89 Mich., 209.

The petitioner then filed additional reasons and affidavits showing why the verdict of the jury should not be confirmed.

The petitioner then gave notice for the settlement of an order of confirmation, and such an order was settled and signed. The notice and order follow:

NOTICE.

STATE OF MICHIGAN—IN THE CIRCUIT COURT FOR
THE COUNTY OF WAYNE:

THE FORT STREET UNION DEPOT
COMPANY,

Petitioner,

vs.

ABSALOM BACKUS, JR.,
A. BACKUS, JR., & SONS,
JAMES N. DEAN,
WILLIAM H. DAVISON,

Respondents.

To Dickinson, Thurber & Stevenson, Attorneys for said
Respondents:

Protesting against the injustice of the writ of mandamus granted by the Supreme Court in this cause, and for the purpose of enabling the petitioner to perfect an appeal herein to the Supreme Court, you are hereby notified that on Monday, the 30th day of November, 1891, or as soon thereafter as counsel can be heard, the petitioner will apply to the Circuit Court for the County of Wayne, before the Honorable George Gartner, Circuit Judge, to settle and sign an order of confirmation in this cause. You are herewith served with a copy of an order which is submitted as a proper one to make under the circumstances of this case.

Detroit, November 27th, 1891.

F. A. BAKER,
Attorney for Petitioner.

ORDER OF CONFIRMATION.

At a session of the Circuit Court for the County of Wayne, held at the Court House, in the City Hall, in the City of Detroit, on the 30th day of November, 1891.

Present: Hon. Geo. Gartner, Circuit Judge.

**THE FORT STREET UNION DEPOT
COMPANY,**

Petitioner,

vs.

**ABSALOM BACKUS, JR.,
A. BACKUS, JR., & SONS,
JAMES N. DEAN,
WILLIAM H. DAVISON,**

Respondents.

In obedience to the writ of mandamus granted by the Supreme Court of this State in the above entitled condemnation suit, but not otherwise, and against the deliberate judgment of this Court, it is ordered, that notwithstanding the objections made to the confirmation of the verdict and award of the jury in this case as set forth in the motion made by the petitioner to vacate and set aside said verdict and award, and notwithstanding the further objections and the affidavits in support thereof this day read and filed, the said verdict and award is hereby in and by virtue of the legal operation and effect of said writ of mandamus, in all things confirmed.

The petition in this case was filed by the Fort Street Union Depot Company, against the above named respondents, to condemn to the public use the right of way for the construction and operation of an elevated railroad in, upon and along River street, in the City of Detroit, in said County of Wayne, in front of the property hereinafter described, in which the respondents are interested as owners, or otherwise, in accordance with the ordinance agreed upon between the Fort Street Union Depot Company and the Common Council of the City of Detroit, the orders of the State Railroad Crossing Board, and of the Commissioner of Railroads and the general plan adopted by said company, all of which are set forth or were mentioned in, and were filed and served with the petition in this case.

The respondents demanded a jury to determine the questions of necessity and compensation.

A jury was impaneled and sworn, who reported to the Court that they were unable to agree on a verdict.

A second jury was then impaneled, and they reported the verdict and award confirmed by this order.

The following is a description of the real estate and property in which the respondents are interested, and in front of which the said elevated railroad is to be constructed and operated, viz:

All those certain pieces or parcels of land situated on the north side of River street, in the City of Detroit, in said county, known as the Backus Planing Mill and Box Factory. Said property is situated on the Lognon Farm, so called, and the River street frontage of said property is 238.06 feet, and it is bounded on the east by a strip of land, the property of the Michigan Central Railroad Company, and on the west by a lot, the property of Barbara Steadley.

It is further ordered that within sixty days from the date of this order, the Fort Street Union Depot Company is required to deposit under the supervision of the clerk of this Court, in the Detroit National Bank, and to the credit of this cause, the sum of ninety-six thousand one hundred and forty-five dollars, and also the costs and expenses of the respondents, including an attorney fee of twenty-five dollars, as they may have been taxed, provided that if said costs and expenses have not been taxed within said sixty days, that the same be so deposited within five days after they are taxed.

Said moneys shall remain on deposit in said bank, but at the risk of petitioner, subject to be drawn therefrom, and to be paid to the parties entitled to the same, on orders signed by one of the judges of this Court and countersigned by the clerk.

It is further ordered that upon the deposit of the said sum of ninety-six thousand one hundred and forty-five dollars, and of the said costs, expenses and counsel fees, as aforesaid, the said The Fort Street Union Depot Company shall be entitled to enter upon and take possession of and use the right of way above described for the purpose of its incorporation, under its articles of association and the constitution and laws of this State, and that said respondents shall be divested and barred of all right, estate and interest in such right of way, until such right or title shall be again legally vested in them, and said right of way shall be deemed to have been acquired by said company for public use.

GEORGE GARTNER,
Circuit Judge.

APPEAL TO SUPREME COURT.

December 5th, 1891, the petitioner gave notice of an appeal to the Supreme Court of the State from this order of confirmation, notice of the appeal being given as required by the statute.

I. How. Stat., p. 893, §3463.

AMENDED ORDER OF CONFIRMATION.

At a session of the Circuit Court for the County of Wayne, held at the Court House, in the City Hall, in the City of Detroit, on the 23d day of January, 1892.

Present: Hon. Geo. Gartner, Circuit Judge.

THE FORT STREET UNION DEPOT
COMPANY,

Petitioner,

vs.

ABSALOM BACKUS, JR.,
A. BACKUS, JR., & SONS,
JAMES N. DEAN,
WILLIAM H. DAVISON,

Respondents.

In obedience to the writ of mandamus granted by the Supreme Court of this State in the above entitled condemnation suit, but not otherwise, and against the deliberate judgment of this Court, it is ordered, that notwithstanding the objections made to the confirmation of the verdict and award of the jury in this case as set forth in the motion made by the petitioner to vacate and set aside said verdict and award, and notwithstanding the further objections and the affidavits in support thereof this day read and filed, the said verdict and award is hereby in and by virtue of the legal operation and effect of said writ of mandamus, in all things confirmed.

The petition in this case was filed by the Fort Street Union Depot Company, against the above named respondents, to condemn to the public use the right of way for the construction and operation of an elevated railroad in, upon and along River street, in the city of Detroit, in said county of Wayne, in front of the property hereinafter described, in which the respondents are interested as owners, or otherwise, in accordance with the ordinance agreed upon between the Fort Street Union Depot Company and the Common Council of the City of Detroit, the orders of the State Railroad Crossing Board, and of the Commissioner of Railroads, the plan approved by the Commissioner of Railroads and the general plan adopted by said

company, all of which are set forth or were mentioned in, and were filed and served with the petition in this case.

The respondents demanded a jury to determine the questions of necessity and compensation.

A jury was impaneled and sworn, who reported to the Court that they were unable to agree on a verdict.

A second jury was then impaneled, and they reported the verdict and award confirmed by this order.

The following is a description of the real estate and property in which the respondents are interested, and in front of which the said elevated railroad is to be constructed and operated, viz.:

All those certain pieces or parcels of land situated on the north side of River street, in the city of Detroit, in said county, known as the Backus Planing Mill and Box Factory. Said property is situated on the Lognon farm, so called, and the River street frontage of said property is 238.06 feet, and it is bounded on the east by a strip of land, the property of the Michigan Central Railroad Company, and on the west by a lot, the property of Barbara Steadley.

It is further ordered that within sixty days from the date of this order, the Fort Street Union Depot Company is required to tender and pay to Absalom Backus, Jr., the sum of seventeen thousand eight hundred and fifty dollars, and to "A. Backus, Jr., & Sons" the sum of seventy-eight thousand two hundred and ninety-three dollars, and to James N. Dean and William H. Davison, executors, the sum of one dollar, together with their costs and expenses if the same have been taxed, including an attorney fee of twenty-five dollars, and if the said parties, or either of them, refuse to accept the tender and payment of said sums the Fort Street Union Depot Company is required to deposit the same under the supervision of the Clerk of this Court in the Detroit National Bank, and to the credit of this cause, including said costs and expenses; provided,

that if said costs and expenses have not been taxed within said sixty days, the same to be so deposited within five days after they are taxed.

Said moneys shall remain on deposit in said bank, but at the risk of petitioner, subject to be drawn therefrom, and to be paid to the parties entitled to the same, on orders signed by one of the judges of this Court and countersigned by the Clerk.

It is further ordered that upon the tender and payment or deposit of the said sum of ninety-six thousand one hundred and forty-four dollars, and of the said costs, expenses and counsel fees, as aforesaid, the said The Fort Street Union Depot Company shall be entitled to enter upon and take possession of and use the right of way above described for the purpose of its incorporation, under its articles of association and the constitution and laws of this State, and that said respondents shall be divested and barred of all right, estate and interest in such right of way, until such right or title shall be again legally vested in them, and said right of way shall be deemed to have been acquired by said company for public use.

GEORGE GARTNER,
Circuit Judge.

TENDER AND PAYMENT.

Very soon after the entry of the foregoing amended order of confirmation, the petitioner tendered to the respondents the amounts so awarded to them. The tenders were accepted by the respondents, and the money was paid to and received by them.

The respondents never caused their costs and expenses to be taxed, and for that reason they were not tendered or paid to them.

TAKING POSSESSION.

Immediately after the foregoing tender and payment the petitioner took possession of the right of way described in the condemnation proceedings, and constructed a viaduct or elevated railroad thereon, and has from thence hitherto used the same for the purposes for which the petitioner was incorporated.

PROCEEDINGS ON APPEAL.

The petitioner prosecuted its appeal to the State Supreme Court. The case was argued March 3d and 4th, 1892, and was decided June 10th, 1892.

Union Depot Co. vs. Backus, 92 Mich., 33.

ORDER OF SUPREME COURT.

At a session of the Supreme Court of the State of Michigan, held at the Supreme Court room in the Capitol, in the City of Lansing, on the tenth day of June, in the year of our Lord one thousand eight hundred and ninety-two.

Present: The Honorable Allan B. Morse, Chief Justice.

John W. McGrath,

Charles D. Long,

Claudius B. Grant,

Robert M. Montgomery,

Associate Justices.

THE FORT STREET UNION DEPOT
COMPANY,

Petitioner and Appellant,

vs.

ABSALOM BACKUS, JR.,

A. BACKUS, JR., & SONS,

JAMES N. DEAN, and

WILLIAM H. DAVISON,

Respondents and Appellees.

This cause having been brought to this Court by appeal from the Circuit Court for the County of Wayne, and having been argued by counsel, and due deliberation having been had thereon, it is now ordered and adjudged that the verdict and award of the jury in this cause, in so far as the same fixes and determines the compensation and damages, that the petitioner ought justly to pay to the respondents, be and the same is hereby vacated and set aside, and that the said verdict and award, so far as the same determines the question of public necessity, be and the same is hereby affirmed.

It is further ordered and adjudged that there be a new appraisal of the compensation and damages that ought justly to be paid to the respondents, be had before a new jury to be impaneled and sworn according to the act under which the proceedings in this cause were instituted, and for the purposes of said new appraisal this cause, and the record therein, are hereby remanded to the Circuit Court for the County of Wayne with directions to proceed with said new appraisal, the costs of this appeal to abide the event of said appraisal as provided by said act."

STATE OF MICHIGAN—IN THE CIRCUIT COURT FOR
THE COUNTY OF WAYNE:

FORT STREET UNION DEPOT
COMPANY,

Petitioner,

vs.

ABSALOM BACKUS, JR.,
A. BACKUS, JR., & SONS,
JAMES N. DEAN,
WILLIAM H. DAVISON,

Respondents.

To Dickinson, Thurber & Stevenson, Attorneys for Re-
spondents:

Gents—Take notice that on Monday, the 10th day of
April, 1893, at the opening of Court or as soon thereafter
as counsel can be heard, the petitioner will move the Court
before the Honorable George Gartner, Circuit Judge, for
an order to strike, summon, swear and impanel a jury for
the trial of the question of damages in this cause in pur-
suance of the order and directions of the Supreme Court
therein.

Detroit, April 5th, 1893.

F. A. BAKER,
Attorney for Petitioner.

STATE OF MICHIGAN—IN THE CIRCUIT COURT FOR
THE COUNTY OF WAYNE:

FORT STREET UNION DEPOT
COMPANY,

Petitioner,

vs.

ABSALOM BACKUS, JR.,

A. BACKUS, JR., & SONS,

JAMES N. DEAN and

WILLIAM H. DAVISON,

Respondents.

Edward A. Stricker, being duly sworn, deposes and says, that on this 5th day of April, 1893, he served a notice, of which the annexed is a copy, upon Dickinson, Thurber & Stevenson, and that such service was made at the office of said firm by handing the same to James H. Cullen, a clerk in said office, all members of said firm being absent therefrom.

EDWARD A. STRICKER.

Subscribed and sworn to before me, a Notary Public, this 5th day of April, 1893.

WALTER BARLOW,

Notary Public, Wayne County, Mich.

At a session of the Circuit Court for the County of Wayne, held at the Circuit Court rooms in the City of Detroit, on the 10th day of April, A. D. 1893.

Present: Hon. Henry N. Brevoort, Hon. George Gartner, Hon. George S. Hosmer, Hon. Cornelius J. Reilly.

FORT STREET UNION DEPOT
COMPANY

VS.

ABSALOM BACKUS, JR., et al.

Before Judge Brevoort.

In this cause it is ordered that it be and it hereby is continued as to the impaneling of a jury until Friday, April 14th, 1893, without prejudice and without the defendant waiving any of his jurisdictional rights.

STATE OF MICHIGAN—IN THE CIRCUIT COURT FOR
THE COUNTY OF WAYNE:

In the matter of the application of the
FORT STREET UNION DEPOT
COMPANY, a corporation, petitioner
against ABSALOM BACKUS, JR.,
"A. BACKUS, JR., & SONS,"
JAMES N. DEAN and WILLIAM H.
DAVISON.

Absalom Backus, Jr., who is a citizen of the State of Michigan, and a person residing in the City of Detroit, County of Wayne and State of Michigan, and A. Backus, Jr., & Sons, which is a corporation created and existing under the laws of the State of Michigan, having its principal office and carrying on its business in the said City of Detroit, and which is a person residing within the said city, on receipt of a notice of motion in this Court that a jury be struck, summoned, sworn and impaneled before the Honorable George Gartner, Circuit Judge, for the trial of the question of damages in this cause, in pursuance of the order and directions of the Supreme Court therein, appearing for the purpose of this pleading, objec-

tion and protest only, in their own proper persons come and say:

That this Court, or the said judge, should not make said order or take any further cognizance or jurisdiction of this matter for the following reasons:

1. That the order and direction of the Court heretofore, and the order and direction of the Supreme Court, affirming the order and direction of this Court in that behalf, and all the proceedings in that behalf, providing and directing a retrial of the question of damages in this cause, and the proposed order to strike, summon, swear and impanel a jury for said re-trial, and any order of the Court, directing a re-trial have constituted, and do and will constitute, a denial by the State of Michigan to the said Absalom Backus, Jr., and the said A. Backus, Jr., & Sons, persons within its jurisdiction, of the equal protection of the laws, contrary to the intent and meaning of article fourteen of the Constitution of the United States, in this:

- (1.) By the Constitution of the State of Michigan and the laws adopted under and in accordance therewith, as uniformly construed by the courts of said State, except in single case where the said Absalom Backus, Jr., and the said A. Backus, Jr., & Sons were parties whose property was sought to be condemned by the said petitioner, under the petition in this matter, the question of the amount of damages to be awarded for the taking of property for public use is one for a jury (when demanded as it was demanded in this case) as an independent and non-judicial body or referee of its own kind without interference or constraint by a court or by any judge with or of the sound discretion of the jury in fixing it.

And in and by said constitution and said laws, as uniformly construed and applied by the courts of the said State, except in the single case of these two persons, a

judge or a court is not permitted to set up a judgment as to said damages by way of binding instruction to said jury and against their judgment in their said sound discretion or by coercing such constitutional body to adopt the judgment or discretion of said court or judge by granting new trials until an award may be reached which may be in accordance with the judgment of said court or judge.

And the said Absalom Backus, Jr., and A. Backus, Jr., & Sons aver, on information and belief, that the courts of the State and Supreme Court of the State of Michigan have applied these principles repeatedly in adjudicated cases, without exception, in protection of all other persons than themselves within its jurisdiction, and have never denied the application of the said principles of the constitution and the said laws of the State or to any person or persons except to them.

They aver that the said Circuit Judge has asserted the right to pass upon the question of the amount of damages to be awarded these respondents, and to set up his judgment against that of the said constitutional body or tribunal, and has sought to maintain his judgment by awarding a new trial in this case; and in this proceeding he is sustained by the Supreme Court of the State, which is a court of last resort in the State of Michigan; and said Supreme Court also, contrary to the uniform course of its decisions, of which there are many in the official reports of the adjudicated cases, affecting other persons within the jurisdiction of the said State, has, as to these respondents in this proceeding, affirmed its right to set up its judgment as to the proper amount of damages to be awarded, against the sound discretion of said jury, and to coerce a conclusion as to the amount in accordance with its

(2.) And in this, that under the said constitution and judgment, by ordering a new trial in this matter against these respondents.

laws of the State of Michigan, and the adjudications of the courts of the said State, the uniform rule in condemnation proceedings, where business is sought to be condemned for public use, has been that damages for interruption of business and to the business stand, and for the diminution of business facilities, should be awarded as part of just compensation in addition to mere injury to the realty; but in this case, and to these persons, the said Circuit Judge and the Supreme Court have denied the protection of that constitutional rule and law, as repeatedly construed by the said courts, and have limited and do limit in this proceeding the damages to mere injury to the realty and to the buildings thereon.

(3.) And in this also, that under the said constitution and laws of the State of Michigan, as uniformly and, as these respondents aver, repeatedly adjudicated by the courts of said State, no court or tribunal has jurisdiction to prosecute a proceeding as for condemnation under the power of eminent domain, when possession has been actually taken of the property sought to be condemned by the person or body upon whom the prerogative to condemn, under the power of eminent domain, has been conferred.

And these respondents aver that the said petitioner has been in full possession of all the said property since the confirmation of the award in this case by the said Circuit Court, and has thereon constructed its railroads, trestles and bridges, and has been carrying on regularly the railroad business of four great railroad companies, besides its own; and that the order for a new trial in these conditions is a denial of the right of these respondents to this protection under said laws from the oppression of litigation, and their undisturbed holding of the amount they have received by the award of the jury, accorded under said laws by the said courts to all other persons than themselves.

2. That the proceeding sought to be taken in form for a new trial is a proceeding under the authority of the State, through the courts, to deprive the said Absalom Backus, Jr., and A. Backus, Jr., & Sons of their property without due process of law, in violation of Section One, of Article Fourteen of Amendments to the Constitution of the United States.

(1.) Because, on the confirmation of the award and proceedings by the Circuit Judge, the total amount of the award was paid to these respondents by the petitioner, and the petitioner entered into full and complete possession of the respondents' property, sought to be taken by the proceedings; whereby the title to said property passed to said petitioner, and the title to said money passed to these respondents.

(2.) And because this proceeding for a new trial is prosecuted not to reach said property the title to which has passed and which is fully possessed by the petitioner, but to reach, under the constraint of the courts, a portion of the award in money the title to which has passed to these respondents.

(3.) And because the use of the said property contemplated by the petitioner, as shown by its said petition, is not a public use, and is not one as in which the public can make, compel, or have any part, interest, or benefit whatsoever, and its business and purposes are for the private ends and gains of the petitioner, in the prosecution of an enterprise charged with no duty to or service to the public by law; and a proceeding for condemnation for private use is not due process of law.

And these respondents here refer to and read, as a part of this their plea, objection and protest against this proceeding, the record and proceedings in this matter from the filing of the petition, including the proceedings of the jury as signed by them in the two former trials, and the

subsequent record and proceedings in this matter in the said Circuit Court and in the Supreme Court of the State of Michigan.

Respectfully submitting the premises, these respondents, Absalom Backus, Jr., and A. Backus, Jr., & Sons, protest against the summoning and impaneling of a jury in this matter and against any further trial or proceedings herein.

A. BACKUS, JR., & SONS,

By H. N. Backus, Vice-President and Acting President.

A. BACKUS, Jr.,

By H. N. Backus.

STATE OF MICHIGAN, }
COUNTY OF WAYNE, } ss.

Henry N. Backus, being duly sworn upon his oath saith: That he is vice-president and acting president of A. Backus, Jr., & Sons, a corporation created and existing under the laws of the State of Michigan, and signed the foregoing statement by direction of the directors and all the stockholders of the said company; that he knows the contents thereof, and that the statements of fact contained therein are true as far as stated of the own knowledge of the respondents therein named, and that the statements therein contained on information and belief, or advice and belief, are true to the best of his knowledge, advice, information and belief.

He further saith that he is authorized and directed by Absalom Backus, Jr., by special direction, in his absence to append his signature to the foregoing statement.

HENRY N. BACKUS.

Subscribed and sworn to before me this 15th day of April, A. D. 1893.

JAMES H. CULLEN,

Notary Public, Wayne County, Mich.

(Indorsed: Plea and Protest to Jurisdiction. Filed April 17, 1893. John Marshall, deputy clerk.)

At a session of the Circuit Court for the County of Wayne, held at the Circuit Court rooms in the City of Detroit, on the seventeenth day of April, A. D. 1893.

Present: Hon. Cornelius J. Reilly, Henry N. Brevoort, George S. Hosmer, George Gartner.

FORT STREET UNION DEPOT
COMPANY.

VS.

ABSALOM BACKUS, JR., et al.

Before Judge Gartner.

The respondents in this cause appearing specially for that purpose, object to the jurisdiction of the Court to proceed to select a jury for a re-trial of said cause, and file a plea and protest to the jurisdiction of the Court, and thereupon the Court, after hearing the arguments of counsel, overruled the same.

At a session of the Circuit Court for the County of Wayne, held at the Circuit Court rooms in the City of Detroit, on the fifth day of July, A. D. 1893.

Present: Hon. George Gartner, George S. Hosmer, C. J. Reilly, Robert E. Frazer, Henry N. Brevoort.

UNION DEPOT COMPANY

VS.

A. BACKUS, JR., COMPANY, et al.

Before Judge Gartner.

Ordered that the trial of this cause be and the same hereby is set for August fifteenth, A. D. 1893.

At a session of the Circuit Court for the County of Wayne, held at the Circuit Court room in the City of Detroit on the 15th day of August, 1893.

Present: Hon. George Gartner, George S. Hosmer,
Henry N. Brevoort, Cornelius J. Reilly, Robert E. Frazer.

FORT STREET UNION DEPOT
COMPANY

vs.

ABSALOM BACKUS, JR., et al.

Before Judge Gartner:

In this cause ordered that the Sheriff for the County of Wayne make and return to this Court a list of twenty-four (24) freeholders from which to strike a jury in this cause, and that said Sheriff summon said jurors to appear in Room 1 of the Circuit Court for Wayne County on September the 1st, at 2 p. m., city time.

STATE OF MICHIGAN—IN THE CIRCUIT COURT FOR
THE COUNTY OF WAYNE:

THE FORT STREET UNION DEPOT
COMPANY,

Petitioner,

vs.

ABSALOM BACKUS, JR.,
A. BACKUS, JR., & SONS,
JAMES N. DEAN and
WILLIAM H. DAVISON,

Respondents.

COUNTY OF WAYNE—ss.

Benjamin F. Briscoe, being duly sworn, deposes and says: That he is one of the deputy sheriffs of the County of Wayne, and that he has been directed by the Court to make a list in writing of twenty-four inhabitants and freeholders of said County of Wayne, who are qualified to serve as jurors in courts of record in this State, from

which to strike a jury in the above entitled cause. Deponent further says and makes oath that he will select such persons according to his best judgment and without favor or partiality to either party.

BENJ. F. BRISCOE.

Subscribed and sworn to before me in open court on this 15th day of August, A. D. 1893.

GEO. GARTNER,
Circuit Judge.

STATE OF MICHIGAN—IN THE CIRCUIT COURT FOR
THE COUNTY OF WAYNE:

FORT STREET UNION DEPOT
COMPANY,

Petitioner,

vs.

ABSALOM BACKUS, JR.,
A. BACKUS, JR., & SONS,
JAMES N. DEAN and
WILLIAM H. DAVISON,

Respondents.

SHERIFF'S RETURN OF LIST OF JURORS.

COUNTY OF WAYNE—ss.

I, Benjamin F. Briscoe, deputy sheriff of the County of Wayne, do hereby certify and return, that in obedience to an order granted by the Court on the 15th day of August, 1893, in the matter of the petition to acquire certain lands for public use of The Fort Street Union Depot Company, petitioner, against Absalom Backus, Jr., and others, respondents, I have selected, according to my judgment and without favor or partiality to either party, the following list, in writing, of twenty-four freeholders

and inhabitants of the said County of Wayne, qualified to serve as jurors in the courts of record in this State, and from which list a jury may be impaneled, according to law, in the case of the said The Fort Street Union Depot Company, petitioner, against the respondents named in the title to this return, and who are persons having estates, or are otherwise interested in one of the lots, tracts or parcels of land sought to be acquired by said petitioner.

LIST OF JURORS.

Names.	Residences.
1. Samuel Marks.....	Cor. Field & Milwaukee avs.
2. Fred Guenther.....	Commonwealth ave.
3. Herbert Snow.....	Dearborn.
4. Thomas A. Dingwall...	1087 Boulevard West.
5. Henry H. Eby.....	Wyandotte.
6. Wm. C. Hausherr.....	216 Pitcher st.
7. Wm. A. Eldridge.....	241 Bagg st.
8. F. F. Summers.....	143 Lincoln ave.
9. Chester E. Wright.....	Belleville.
10. Berthold Mueller.....	300 Toledo ave.
11. Joseph B. Moore.....	116 Alfred st.
12. John C. Jacob.....	268 Rivard st.
13. Wm. Wreford.....	345 Larned st. east.
14. John W. Leonard.....	671 Fourth ave.
15. Peter Flannigan.....	871 Humboldt ave.
16. Ferdinand Kuhn.....	14 Michigan ave.
17. Mason E. Safford.....	208 Jefferson ave.
18. Edward Kanter.....	Madison ave.
19. James B. Lauder.....	87 Elizabeth st. east.
20. F. Wm. Lichtenberg....	205 Fort st. east.
21. Marvin H. Chamberlain	17 Peterboro st.
22. John McLean.....	1560 Woodward ave.
23. John McDonald, Jr.....	407 Myrtle st.
24. Hiram Bunnell.....	27 Michigan ave.

Given under my hand on this the first day of September, 1893, at Detroit, in said County of Wayne.

BENJAMIN F. BRISCOE,

Deputy Sheriff.

(Endorsed No. 29249—Sheriff's Return of Jury List.)

SAMUEL STEWART,

Deputy Clerk.

Filed September 5th, 1893.

STATE OF MICHIGAN—IN THE CIRCUIT COURT FOR
THE COUNTY OF WAYNE:

STATE OF MICHIGAN, } ss.
COUNTY OF WAYNE, }

To the Sheriff of Wayne County—Greeting:

In the name of the People of the State of Michigan, you are hereby commanded that you summon:

1. Herbert Snow, Dearborn;
2. Henry H. Eby, Wyandotte;
3. Thomas A. Dingwall, 1087 Boulevard West;
4. William C. Hausherr, 216 Pitcher;
5. William A. Eldridge, 241 Baggs;
6. F. F. Summers, 143 Lincoln;
7. Chester E. Wright, Belleville;
8. Joseph B. Moore, 116 Alfred;
9. John W. Leonard, 671 Fourth;
10. Peter Flannigan, 871 Humboldt ave.;
11. Mason S. Safford, 206 Jefferson ave.;
12. Edward Kanter, 25 Madison ave.;

To be and appear in the Circuit Court for the County of Wayne at the Circuit Court room in the City of Detroit on Monday, the 11th day of September, A. D. 1893, at 2 o'clock in the afternoon of said day, to serve as jurors for the trial of the case of The Fort Street Union Depot Company against Absalom Backus, Jr., and others, and of this writ make due return.

Witness the Hon. George Gartner, presiding judge.

In witness whereof I have hereunto set my hand and affixed the seal of said Court on this the fifth day of September, A. D. 1893.

(Seal.)

WILLIAM MAY,

Clerk of the Circuit Court for the
County of Wayne, State of Michigan.

By JAMES A. ROBINSON,
Deputy Clerk.

STATE OF MICHIGAN, {
COUNTY OF WAYNE, { SR.

I hereby certify and return to the clerk of the Circuit Court for the County of Wayne that I have served the within veniri, or writ of summons, upon the persons within specified.

Dated at Detroit this 11th day of September, 1893.

Fees, \$15.00.

CHARLES P. COLLINS,
Sheriff.

By BENJ. F. BRISCOE,
Deputy Sheriff.

Received and filed on the 11th day of September, A. D. 1893.

WM. E. FENWICK,
Deputy Clerk.

STATE OF MICHIGAN—IN THE CIRCUIT COURT FOR
THE COUNTY OF WAYNE:

THE FORT STREET UNION DEPOT
COMPANY,

Petitioner,

vs.

ABSALOM BACKUS, JR.,
A. BACKUS, JR., & SONS,
JAMES N. DEAN and
WILLIAM H. DAVISON,

Respondents.

COUNTY OF WAYNE—ss.

We, the undersigned inhabitants and freeholders of said County of Wayne, being duly impaneled to serve as a jury in this cause to determine the damages or compensation which ought justly to be paid by said petitioner, The Fort Street Union Depot Company, to the respondents as the owners of and persons interested in the particular description of real estate mentioned and described in said petition, do hereby take and subscribe on oath that they will justly and impartially ascertain and determine the damages or compensation which ought justly to be made by said company to said respondents according to the constitution and laws of this State.

MASON S. SAFFORD,
WM. C. HAUSHERR,
RICHARD ROWLAND,
EVERETT N. CLARK,
VINCENT ZIMMEL,
HENRY H. EBY,
JOHN W. LEONARD,
JAMES M. YOUNG,
HENRY E. BAKER,
F. F. SOMMER,
CHESTER E. WRIGHT,
JOHN E. CALNOR.

Taken and subscribed before me in open Court on this, the 11th day of September, 1893.

GEORGE GARTNER,
Circuit Judge.

At a session of the Circuit Court for the County of Wayne, held at the Circuit Court rooms in the City of Detroit, on the 11th day of September, A. D. 1893.

Present, Hon. George Gartner, Hon. George S. Hosmer, Hon. C. J. Reilly, Hon. Robert E. Frazer, Hon. Henry N. Brevoort.

THE FORT STREET UNION DEPOT
COMPANY,

vs.

ABSALOM BACKUS, JR.,
A. BACKUS, JR., & SONS,
JAMES N. DEAN and
WILLIAM H. DAVISON.

Before Judge Gartner.

In this cause, the sheriff for the County of Wayne on this day having made return to the venire issued that he had served said venire on the persons named therein, and all of the persons named therein except William A. Eldridge having appeared and the following: Herbert Snow, Thomas A. Dingwell, Joseph B. Moore, Peter Flannigan, after showing due cause therefor, and having been with the other jurors sworn on their voir dire, were excused from serving in said cause; and the Court having ordered the sheriff to summon talesmen, and thereupon such proceedings were had that on the 11th day of September, 1893, the following named persons, freeholders, qualified to sit as jurors in courts of record in this State, to wit: Henry E. Baker, Henry H. Eby, Wm. C. Hausherr, Frank F. Sommers, Chester E. Wright, John W. Leonard, Mason

E. Safford, John E. Calnon, Richard Rowland, Vincent Zimmel, James M. Young and Everett M. Clark, were duly impaneled, tried and sworn as a jury to determine the public necessity for taking and using for public use the real estate, property rights and assessments and privileges described in the petition in said cause and which the above named respondents are interested as owners or otherwise, and if they shall deem the same necessary to be taken, to justly and impartially determine the damages or compensation which ought justly to be made by the said petitioners to said respondents as owners or as interested in said real estate, property, interests, rights, assessments and privileges mentioned in said petition, said jurors having subscribed said oath and the same having been filed, they retired and elected Henry E. Baker, one of their number, as their foreman, and the sheriff appointed the sheriff of the County of Wayne as the proper person to attend and take charge of said jury while engaged in said proceedings.

PROCEEDINGS WHEN JURY WERE IMPANELED.

The record shows that the following proceedings took place when the jury were impaneled:

Before Judge Gartner.

September 5th, 1893.

Mr. Dickinson: On behalf of the respondents in this case I desire to renew my solemn protest against a re-trial and against a further harassment of these respondents in this matter for the reasons stated in the papers filed at the last hearing, when the order was entered to proceed with the drawing and striking of a jury. I desire that this protest be entered now and at every stage of the proceedings. I desire the report to further note that the Court is present at this time.

A jury was then struck in the regular way by Mr. F. A. Baker, on behalf of the petitioner, and Mr. Don M. Dickinson, on behalf of the respondents, and an adjournment taken to Monday, September 11th, 1893, at 2 p. m.

September 11, 1893, 2 p. m.

The Court: You may call the jury, Mr. Sheriff.

Mr. Dickinson: Before the jury is called, if your honor please, I desire to ask whether your honor, Judge Gartner, of the Circuit Court, proposes to sit in this case.

The Court: I have not yet considered that matter.

Mr. Dickinson: So far as the presence of the Court is required.

Mr. Baker: If the Court please, in regard to that matter, we argued that question somewhat fully before the Supreme Court in the second hearing in this case, and I became satisfied that the Supreme Court from the decision that they had made in the case, and from what took place on the argument in that case, are of the opinion that it is perfectly competent for the Circuit Judge to try these cases precisely the same as in an ordinary civil action at common law, and your honor will remember that the statute expressly provides for it.

Mr. Dickinson: I do not think you quite understand my motion, Mr. Baker. I was not going into that question of whether it is competent for the Court to sit, whatever judge we have. I asked His Honor whether it is his purpose to sit in this matter—leaving that question open as to the competency to sit permanently or a time.

The Court: The matter is before me now, Mr. Dickinson.

Mr. Dickinson: We had no means of knowing until this time, because we are now just entering upon the examination of the jurors and the question arises. We had no opportunity of knowing whether your honor would sit here until this moment.

The Court: I have had charge of the matter since its

inception. I suppose I shall have to continue in charge of it.

Mr. Dickinson: Very well. Now, upon that matter I desire to ask, under instructions of my clients—the specific instructions in writing of my clients—to have some other judge sit, on the ground that your honor is prejudiced against them and on account of the influence which your honor would be under, consciously or unconsciously, for the petitioner. This motion we would like to support by affidavit at any time your honor will hear it.

Mr. Baker: Of course no such motion can be entered, if the Court please. No such motion has ever been made in my experience in the State of Michigan—such a thing as challenging the Court.

Mr. Dickinson: I will cite your honor a precedent in the 89 Kentucky, in a precisely similar case, as it happens, of the building of a viaduct, and it is always competent—wherever it is believed, I think, in any case at common law—wherever either party believes that he is entitled to a change of venue, for instance, or believes that the court before whom he is to be heard is prejudiced—it is always competent and he has a right to make a motion for a change of judge.

Mr. Baker: No such practice has ever prevailed in this State or any other jurisdiction, unless there is some statute that provides for it. In Kentucky they have some statute which authorizes either party to call for a trial by a member of the bar, but there is no such jurisdiction here. There is no such thing as change of venue because of the prejudice of the Court, and it is an insult to the Court to allege any such thing.

Mr. Dickinson: I do not think your honor will so understand it as an insult to the Court. It is perfectly competent for the party to make the objection and to support it.

Mr. Baker: I frequently find fault with the judges, but I never come into court to do it.

The Court: I think, Mr. Dickinson, that having had charge of this matter from the beginning, I will take charge of it at this time.

Mr. Dickinson: And your honor will not listen to affidavits showing the prejudice or in support of the objection I have made?

The Court: I have not said that. Of course, I do not know what the affidavits are.

Mr. Dickinson: Well, we desire time to make that showing. We did not know before this time that your honor would sit.

The Court: You might impanel the jury; they will have to view the premises.

Mr. Dickinson: Your honor exercises the judicial function at once on the impaneling of the jury. It must be made now if at any time. I suppose your honor has the power to go on without listening to the motion, if your honor sees fit.

The Court: I am here willing to listen to any motion counsel desires to make.

Mr. Dickinson: This motion I desire to make and sustain it by affidavit.

The Court: I will hear it at this time.

Mr. Dickinson: We have not been prepared.

Mr. Baker: A man who comes in with such a motion as that ought to be prepared.

Mr. Dickinson: Yes, he ought to be, if he knew who the Court was to be.

Mr. Baker: You ought to know who the Court was to be.

The Court: I think you may go on and impanel the jury; the matter will be adjourned for a few days anyway.

Mr. Dickinson: And your honor will listen to the motion later?

The Court: Yes.

Mr. Dickinson: If your honor has the 89 Kentucky, your honor will see that it is an entirely proper motion.

The Court: I am not at all thin-skinned, Mr. Dickinson.

Mr. Dickinson: I desire, may it please the Court, at this stage of the case also to interpose the objection to a re-trial of the case, which I have heretofore stated in writing on the files of the Court, and to protest against this re-trial for those reasons and against the jurisdiction of the Court.

The Court: You may proceed with calling the jury, Mr. Sheriff.

The jury was then called and selected in the regular way, and duly sworn.

The Court: Gentlemen of the Jury—This is a case which will probably take some time to try, and all that is necessary for me to say at this time is that in view of the fact that it is a very important case, you are to be very careful not to hold any conversation about it, either among yourselves, or to permit any conversation with any outsider with reference to the matter. You must keep your mind entirely clear and free from any influence. You want to listen to the testimony and the arguments of counsel as they are made in Court, and after you retire to the jury room then, and only then, to talk the matter over and consider the testimony offered in the case, together with the arguments of counsel, in arriving at a conclusion of such questions as may have been presented to you.

Adjourned until September 13, 1893.

The trial before the jury, the Hon. George Gartner, Circuit Judge, presiding, went on from September 13, 1893, to November 6, 1893, when the jury agreed upon and reported to the Court a written award signed by all of the twelve jurors. The original award was misplaced in the files of the Court, and was not to be found when return

was made to the State Supreme Court, but its contents were shown by affidavits duly filed, so that no question arises thereon.

AWARD OF JURY.

The damages or compensation awarded to
 Absalom Backus, Jr. \$15,000
 To A. Backus, Jr., & Sons. 48,000

TESTIMONY.

The jury returned with their award a stenographic report of the testimony and arguments of counsel, and the rulings of the Circuit Judge, and his charge and instructions to the jury. This report covers nearly 1,300 printed pages, but as no question arises thereon, on this motion, it is not here printed.

STATE OF MICHIGAN—IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE:

THE FORT STREET UNION DEPOT
 COMPANY,

Petitioner,

vs.

ABSALOM BACKUS, JR.,
 A. BACKUS, JR., & SONS,
 JAMES N. DEAN and
 WILLIAM H. DAVISON,

Respondents.

Gents:

You will please take notice that on Monday, the 4th day of December, 1893, at the opening of Court on that

day, or as soon thereafter as counsel can be heard, the petitioner will move the Court, before the Honorable George Gartner, Circuit Judge, to enter the following judgments in favor of petitioner in this cause under the statute:

1. A judgment against Absalom Backus, Jr., for \$2,850.00, with interest, from the 23d day of January, 1892.

2. A judgment against A. Backus, Jr., & Sons for \$30,293.00, with interest from the 23d day of of January, 1892.

3. A judgment against Absalom Backus, Jr., and A. Backus Jr., & Sons, for the costs of the second trial of this cause, including all costs of the appeal, according to the statute in such case made and provided.

Said motion will be entered of record and records in this case in the Supreme Court and in this Court.

Detroit, November 21st, 1893.

F. A. BAKER,
Attorney for Petitioner.

To Dickinson, Thurber & Stevenson, Attorneys for Respondents.

(Endorsed: No. 29,249. Motion to Enter Judgment.)

STATE OF MICHIGAN—IN THE CIRCUIT COURT FOR
THE COUNTY OF WAYNE:

THE FORT STREET UNION DEPOT
COMPANY,

Petitioner,

vs.

ABSALOM BACKUS, JR.,
A. BACKUS, JR., & SONS,
JAMES N. DEAN and
WILLIAM H. DAVISON,

Respondents.

OBJECTION AND PLEA TO ENTRY OF JUDGMENT.

Without waiving the objections heretofore made in this cause, in the course of the proceedings, to the jurisdiction of the Court, and of the tribunal before which the last hearing was had, but expressly reserving all such objections and all protests against said jurisdiction and said proceedings heretofore made, and renewing them, Absalom Backus, Jr., and A. Backus, Jr., & Sons, on receiving notice of the motion made by the above named petitioner for judgment against the said Absalom Backus, Jr., for \$2,850.00, with interest, and for a judgment against A. Backus, Jr., & Sons for \$30,293.00, with interest, and for a judgment against both Absalom Backus, Jr., and A. Backus, Jr. & Sons, "for the cost of the second trial of this cause, including all costs of the appeal," file the following objections and plea:

1. That the Court has no jurisdiction or authority to enter said judgment, or any of them, and that the provisions in said statute referred to in the said motion for the said judgments, and in accordance with which said motion is alleged to be made, are unconstitutional and void.

2. That it appears by the record that before any proceedings were taken for the said alleged second trial of this matter, the said petitioner had entered fully and absolutely into the possession and ownership of the property described in the petition, and thereby sought to be condemned, and has paid the respondents for the same without condition, and has been for a long period of time, to wit, a year or more, operating lines of railroad upon said property so sought to be condemned, and possessed and owned by it, upon which it had constructed its permanent railroad trestle work and other equipments of this railroad, all as described in said petition; and that therefore, under the Constitution and laws of the State there was no jurisdiction or authority to proceed with said condemnation proceedings in and by the said second trial.

3. That as the consideration of the question of necessity for the alleged improvements set forth in the petition was expressly excluded from the consideration of the jury by the Court, the proceeding of ordering a new jury and a second trial before them upon the single question of damages, was void and of no effect.

4. That after the objection and protest of the respondents at the said second trial, the Circuit Judge, Hon. George Gartner, did before the said jury sit from the beginning of the trial of the cause to its close, in all respects as in a trial at common law, and did hold before the said jury that his function in that regard was not advisory, but that the said Judge had the power to rule upon and admit or exclude testimony, and to direct and instruct the jury; and did state to the jury in that connection that he would not only instruct them, but that he would see that his instructions were carried out, thereby restraining the jury and restricting their judgment and discretion, in direct violence of the Constitution of the State, and of the construction of the said Constitution by the Courts of

last resort of the State, and in every other case involving the premises, except in these proceedings, thereby denying the respondents, Absalom Backus, Jr., and A. Backus, Jr., & Sons, persons within its jurisdiction, by the State of Michigan, of the equal protection of the laws of said State, in violation of the true intent and meaning of Article 14 of the Constitution of the United States. ,

5. That under the Constitution of the State of Michigan the property of no person shall be taken for public use without just compensation made therefor; and that when private property is taken for the use or benefit of the public, the necessity for using such property and the just compensation to be made therefor, except when made by the State, shall be ascertained by a jury of twelve freeholders residing in the vicinity of such property, or by not less than three commissioners appointed by a court of record, as shall be prescribed by law.

That the necessity of taking the property in question has not been passed upon by a jury, as prescribed by the Constitution, except in a verdict which has been annulled and set aside by the decision of the Supreme Court.

6. That the verdict first rendered in this matter was appealed from, as a whole, by the petitioners, and wholly set aside, and on the second trial of said cause the Court erred in holding that such verdict, after having been appealed from and set aside, was still in force, so far as it found that it was necessary to take the property for public use.

7. That it is not competent, under the Constitution of this State, to rest the taking of private property for public use partly upon one verdict, and partly upon another; but under the Constitution, a single jury, or commissioners when allowed by law, must find the necessity for taking such property, as well as the damages to be allowed to the owner for taking the same.

8. That the Circuit Judge erred in charging the jury that in fixing the just compensation to be allowed to the respondents, the jury should consider only the property described in the petition; whereas the plant consisted in addition of a lumber yard and storehouse that were used together with said property, and all the evidence tended to show injury to the entire business carried on by the concern, and to all of the property on which it was conducted.

9. That the Court erred, in the charge to the jury, in all that was said by the Court in instructing them to discharge anything of a speculative nature, in connection with the requests for instruction made by the counsel for the respondents, and the colloquy between the Court and said counsel regarding those requests immediately succeeding them.

10. That the Court erred in refusing to consider the requests of counsel for respondents that the jury should consider something apart from the money value of the property itself, and the point that respondents were entitled to be compensated apart from the money value of the property itself, so as to lose nothing from the interruption of their business and the damage occasioned by the change.

11. The Court erred in its refusal to follow the decision read to the Court upon question of damage, delivered by Mr. Justice Campbell, in the case of *Grand Rapids R. R. vs. Weiden*, 70 Mich., 393.

12. That the counsel for the petitioners argued to the jury that the compensation allowed by the first jury had been held by the Supreme Court of this State to be excessive, thereby improperly influencing the judgment of the jury upon said second trial, by the alleged opinion of the Judges of the Supreme Court on the question of damages.

13. That the jury impaneled in this cause was improperly influenced in their decision as to the just compensation to be allowed said respondents, by a statement of one of said jurors that he had examined the assessment rolls and found that the property in question had been assessed at twenty-seven or twenty-eight thousand dollars (\$28,000.00); whereas no such evidence had been introduced in said cause, and no such evidence was properly before said jury. That the statement made as to said assessment rolls was not only improper, but absolutely misleading. The assessments of said property showing that before said elevated railway had been built, said property was assessed at about double what it was assessed after the building of said elevated railway; as will appear by an affidavit hereto attached.

14. That said jury, in considering their verdict, were improperly influenced by a statement made by some of their number, that the witness Jones, who had testified to the entire fire risk on account of the building of said elevated railway, had served as a juror on the first trial of this cause; whereas in truth and in fact the said Jones had not so served, and was entitled to the credit to be given to a fair and impartial witness.

15. That the jury in this cause acted improperly and illegally in not examining the premises in question together, and that the jurors Baker and Safford acted improperly and illegally in separating themselves from the rest of said jury, and making a separate examination of said property.

16. That the jurors in said cause were improperly influenced in said cause by the statement of one of their number, Mr. Sommers, that the reason why the retail trade of the respondents had fallen off was that they so treated their customers that no one ever dealt with them but once; all of which instances of misbehavior and illegal

action on the part of said jury will appear by the affidavits hereto attached.

17. Because the verdict is against the evidence, and because on the whole record it conclusively appears that the jury was unduly influenced and constrained to reduce the verdict of the first jury, and to discharge all the evidence in the cause tending to show the amount of damages.

18. Further objecting to the granting of the motion in this matter, the respondents renew the objections to the proceedings for a second trial from their inception which were embraced in the protests and objections of these respondents filed in this cause before the empaneling of the jury, a true copy of which is hereto annexed, marked Exhibit "A."

DICKINSON, THURBER & STEVENSON,

Attorneys for Absalom Backus, Jr.,

and A. Backus, Jr., & Sons.

JOHN ATKINSON,

Of counsel.

STATE OF MICHIGAN—IN THE CIRCUIT COURT FOR
THE COUNTY OF WAYNE:

In the Matter of
THE FORT STREET UNION DEPOT
COMPANY,

Petitioner,

vs.

ABSALOM BACKUS, JR.,
A. BACKUS, JR., & SONS,
JAMES N. DEAN and
WILLIAM H. DAVISON,

Respondents.

STATE OF MICHIGAN, }
COUNTY OF WAYNE, } ss.

DANIEL B. GRISWOLD, of said County, being duly sworn, says that the verdict recently given in this cause is grossly inadequate, unjust and oppressive.

This affiant further states that since the giving of said verdict he has talked with Messrs. Zimmer, Young, Eby and Hauser, who were members of said jury; that he is informed by said jurors that during the discussion in the jury room after said cause was submitted, a member of said jury, whom some of the above named jurors say was Mr. Sommers, stated to his fellow jurors that he had examined the assessment rolls in the City Hall, and that the property in question was assessed at something like twenty-seven or eight thousand dollars, and that, therefore, it was of little value compared with value put upon it by the witnesses; that during the discussion in said jury room, one of the jurors, whom some of the above named jurors also say was Mr. Sommers, stated that the reason of the falling off of the retail trade of respondents was because they so dealt with their customers that no one ever bought from them but once.

This deponent further says that he learned from said jurors that some of the jurors on said panel insisted that the testimony of Mr. Jones, who was sworn on said trial, should be entirely disregarded, on the ground that he had been one of the previous jurors in this case.

This deponent further says that after his Honor Judge Gartner had directed the jury to go in a body to examine the property in question, two of the jurors, Messrs. Baker and Safford, separated themselves from the rest and drove to the premises in question by themselves and made their examination separate and apart from the other jurors.

This deponent further states that said Baker and Safford, as this deponent has learned from the other jurors in said cause, voted throughout for a very low compensation.

That deponent was informed by said jurors that the juror Sommers, during the time the jurors were in the jury room and were considering, separated himself from the others and voted for a very low compensation, to wit, fifteen thousand dollars, absolutely refusing to reason with his fellow jurors or to give any other reason for the vote which he cast except as above stated.

DANIEL R. GRISWOLD.

Subscribed and sworn to before me this 13th day of December, A. D. 1893.

JENNIE ATKINSON,

Notary Public, Wayne County, Michigan.

STATE OF MICHIGAN—IN THE CIRCUIT COURT FOR
THE COUNTY OF WAYNE:

THE FORT STREET UNION DEPOT
COMPANY,

Petitioner,

vs.

ABSALOM BACKUS, JR.,
A. BACKUS, JR., & SONS,
JAMES N. DEAN and
WILLIAM H. DAVISON,

Respondents.

STATE OF MICHIGAN, }
COUNTY OF WAYNE, } ss.

JAMES A. JONES, being duly sworn, says that he was a witness called for the respondents at the last trial of the above matter. He further saith that he never sat as a juror in any cause in which the above named petitioner was a party, and that he never sat as a juror in any cause where the above named defendants, or any or either of them were parties, except once, and that was in 1882, in a cause where the Detroit Western Transit & Junction Railroad was the other party to the cause.

JAMES A. JONES.

Subscribed and sworn to before me this 16th day of December, 1893.

JAMES H. CULLEN,
Notary Public, Wayne County, Michigan.

STATE OF MICHIGAN—IN THE CIRCUIT COURT FOR
THE COUNTY OF WAYNE:

In the matter of
THE FORT STREET UNION DEPOT
COMPANY,

Petitioner,

vs.

ABSALOM BACKUS, JR.,
A. BACKUS, JR., & SONS,
JAMES N. DEAN,
WILLIAM H. DAVISON,

Respondents.

STATE OF MICHIGAN, }
COUNTY OF WAYNE, } ss.

HENRY N. BACKUS, of said County, being duly sworn, says that he is one of the above named respondents; that the verdict recently given in this cause is greatly inadequate, unjust and oppressive.

This affiant further states that since the giving of said verdict he has talked with Messrs. Zimmer, Young, Eby and Hauser, who were members of said jury; that he is informed by said jurors that during the discussion in the jury room after said cause was submitted, a member of said jury, whom some of the above named jurors say was Mr. Sommers, stated to his fellow jurors that he had been over and examined the assessment rolls in the City Hall, and that the property in question was assessed at something like twenty-seven or twenty-eight thousand dollars, and that, therefore, it was of little value compared with value put upon it by the witnesses; that since hearing the said statement of said jurors, affiant has examined the said assessment rolls and finds that since the building and operation of the petitioner's railroad, the assessment of the said real estate has been spread upon the said roll at less

than half what it was before said railroad was built, and that he has been further informed by said jurors that during the discussion in said jury room, one of the jurors, whom some of the above named jurors also say was Mr. Sommers, stated that the reason of the falling off of the retail trade of respondents was because they so dealt with their customers that no one ever bought from them but once.

This deponent further says that he learned from said jurors that some of the jurors on said panel insisted that the testimony of Mr. Jones, who was sworn on said trial, should be entirely disregarded, on the ground that he had been one of the previous jurors in the case.

This deponent further says that after his Honor Judge Gartner had directed the jury to go in a body to examine the property in question, two of the jurors, Messrs. Baker and Safford, separated themselves from the rest and drove to the premises in question by themselves and made this examination separate and apart from the other jurors.

This deponent further states that said Baker and Safford, as this deponent has learned from the other jurors in said cause, voted throughout for a very low compensation.

That deponent was informed by said jurors that the juror Sommers, during the time the jurors were in the jury room and were considering, separated himself from the others and voted for a very low compensation, to wit, fifteen thousand dollars, absolutely refusing to reason with his fellow jurors or give any other reason for the vote which he cast except as above stated.

HENRY N. BACKUS.

Subscribed and sworn to before me this 16th day of December, A. D. 1893.

JAMES H. CULLEN,
Notary Public, Wayne County, Michigan.

And then follows, as Exhibit "A," the plea and protest of Absalom Backus, Jr., and A. Backus, Jr., & Sons, as set forth on pages 36 to 42 of this record.

(Endorsed: Objections to judgment. Filed Dec. 28th, '93. Victor T. Lemke, Deputy Clerk.)

JUDGMENT.

At a session of the Circuit Court for the County of Wayne, held at the Court Rooms, in the City of Detroit, on the 28th day of December, 1893.

Present, Hon. George Gartner, Circuit Judge.

THE FORT STREET UNION DEPOT
COMPANY,

Petitioner,

vs.

ABSALOM BACKUS, JR.,
A. BACKUS, JR., & SONS,
JAMES N. DEAN and
WILLIAM H. DAVISON,

Respondents.

It appearing that heretofore, to wit, on the 16th day of July, 1891, a jury impaneled in this cause to determine the questions of public necessity and compensation, rendered, reported and filed in this Court a verdict in favor of the public necessity, and awarding compensation or damages to the respondents as follows:

To Absalom Backus, Jr., as the owner of the fee of the property described in the petition in this cause, the sum of seventeen thousand eight hundred and fifty dollars.

To A. Backus, Jr., & Sons, a corporation, as the tenants in the possession of the said parcel of land, the sum of seventy-eight thousand two hundred and ninety-three dollars.

To James N. Dean and William H. Davison, executors of the estate of Crozier Davison, deceased, the sum of one dollar.

And it further appearing that the petitioner, The Fort Street Union Depot Company, appealed from the said award of damages or compensation to the Supreme Court of this State, and that said Court, under the statute in that behalf, directed that a new appraisal be had before a new jury, and remanded the case to this Court for that purpose.

And it further appearing that heretofore, to wit, on the 11th day of September, 1893, a jury was duly impaneled and sworn to make a new appraisal in this cause according to law, and that on the 6th day of November, 1893, said jury assessed the damages or compensation of said Absalom Backus, Jr., at the sum of fifteen thousand dollars, and the damages or compensation of said A. Backus, Jr., & Sons, at the sum of forty-eight thousand dollars.

And the said petitioner having made a motion that judgment be rendered against said respondents respectively for the amounts said awards were reduced by said second appraisal.

And said respondents having filed certain affidavits and objections in opposition to said motion.

And the questions so presented having been duly argued by Fred A. Baker, attorney for the petitioner, and by John Atkinson and Don M. Dickinson, counsel for respondents, and the Court having duly considered and deliberated thereon, it is ordered and adjudged that all of the objections to said motion, including the matters set forth in said affidavits, are overruled as not sufficient to defeat the entry of said judgments under the statute in such cases made and provided, and on motion of F. A. Baker, attorney for petitioner, it is ordered and adjudged and considered that said petitioner, the Fort Street Union

Depot Company, do recover of the respondent Absalom Backus, Jr., the sum of two thousand eight hundred and fifty dollars, and that petitioner have execution thereof.

And on motion it is further ordered, adjudged and considered that the petitioner The Fort Street Union Depot Company do recover of the corporation respondent, A. Backus, Jr., & Sons, the sum of thirty thousand two hundred and ninety-three dollars, and that petitioner have execution thereof.

And on like motion it is further ordered, adjudged and considered that the petitioner The Fort Street Union Depot Company do recover of the respondents, Absalom Backus, Jr., and A. Backus, Jr., & Sons, the costs of the petitioner on its said appeal, including the costs of said second appraisal as a part thereof, the said costs to be taxed according to law and the rules and practice of this Court, and that the petitioner have execution thereof.

GEO. GARTNER,

Circuit Judge.

(Endorsed: No. 29249. Judgments. Filed December 28th, 1893. Victor T. Lemke, Dep. Clerk.)

STATE OF MICHIGAN—IN THE CIRCUIT COURT FOR
THE COUNTY OF WAYNE:

THE FORT STREET UNION DEPOT
COMPANY,

Petitioner,

vs.

ABSALOM BACKUS, JR.,
A. BACKUS, JR., & SONS,
JAMES N. DEAN and
WILLIAM H. DAVISON,

Respondents.

PETITIONER'S TAXED BILL OF COSTS UNDER
SECOND APPRAISAL.

Return to appeal.....	\$	5.00
Copy of record for printer, 3,076 folios at 10c....		307.60
Printing record, 1,542 pages at 80c.....		1,233.60
Printing brief, 65 pages at 80c.....		52.00
Clerk's fee, Supreme Court.....		6.00
Fees for 12 jurymen for 50 days each, at \$2.50...		1,500.00
Transcript of testimony and proceedings reduced to writing, 4,795 folios at 20c.....		959.00
Witnesses—		

Frances Adams,	1 day 1 mile.....	1.10
Jas. F. Joy,	1 " 1 "	1.10
Robert Zug,	1 " 1 "	1.10
Lewis H. Phister,	1 " 1 "	1.10
E. F. Chapman,	1 " 1 "	1.10
P. C. Miller,	2 " 221 "	24.10
John Frim,	1 " 1 "	1.10
C. M. Heald,	1 " 1 "	1.10
G. F. Sherwood,	2 " 80 "	9.00
Henry Spitzley,	2 " 1 "	2.10
A. F. Kramer,	2 " 1 "	2.10
Edwin Saunders,	1 " 100 "	11.00

Geo. H. House,	1	"	100	"	11.00
Chas. H. Ellis,	1	"	1	"	1.10
Geo. M. Brown,	1	"	100	"	11.00
Thos. J. Hadsell,	1	"	100	"	11.00

\$4.168.20

STATE OF MICHIGAN, }
COUNTY OF WAYNE } ss.

FRED A. BAKER, being duly sworn, says that the foregoing items of costs charged as disbursements have actually been paid, or the liabilities therefor incurred, and were necessary and are reasonable in amount; that the witnesses above named were in good faith made to attend, and were deemed material and necessary, and they respectively traveled the number of miles and actually attended the number of days specified, and that the copies and exemplifications charged for were actually and necessarily used, or necessarily and in good faith obtained for use.

FRED A. BAKER,

Sworn to and subscribed before me this 29th day of December, A. D. 1893.

EDWARD A. STRICKER,

Notary Public, Wayne County, Michigan.

To Dickinson, Thurber & Stevenson, Attorneys for Respondents:

Take Notice: The foregoing is a true and correct copy of petitioner's bill of costs in this cause, and of the affidavit of disbursements required by rule. Application will be made to the Clerk of said Court, at his office, on the 2nd day of January, A. D. 1893, at 10 o'clock a. m., to tax the same.

Dated at Detroit, December 29, A. D. 1893.

Yours, etc.,

FRED A. BAKER,

Attorney for Petitioner.

TAXED BILL OF COSTS FOR PLAINTIFF.

I do hereby tax the costs of plaintiff at the sum of four thousand one hundred and sixty-eight dollars and twenty cents.

WM. MAY,
Clerk.

Dated February 12th, 1894.

STATE OF MICHIGAN—IN THE CIRCUIT COURT FOR
THE COUNTY OF WAYNE:

THE FORT STREET UNION DEPOT
COMPANY,

Petitioner,

VS.

ABSALOM BACKUS, JR.,
A. BACKUS, JR., & SONS,
JAMES N. DEAN and
WILLIAM H. DAVISON,

Respondents.

And now come the said respondents, by Don M. Dickinson, their counsel, and move the Court to vacate and set aside the order of William May, Esq., Clerk of said Court, taxing the costs of the petitioner in the above entitled cause at the sum of \$4,168.20, for the following reasons:

(1) That the taxation of the entire bill of costs is invalid on the general ground that all of the proceedings had in the above cause were invalid and without jurisdiction, and particularly that the alleged judgment is invalid, and that the Court or Judge had no jurisdiction to enter the said judgment.

(2) That the Court below has no statutory authority to tax the said bill of costs.

DON M. DICKINSON,
Attorney for Respondents.

STATE OF MICHIGAN—IN THE CIRCUIT COURT FOR
THE COUNTY OF WAYNE:

THE FORT STREET UNION DEPOT
COMPANY,

Petitioner,

vs.

ABSALOM BACKUS, JR.,
A. BACKUS, JR., & SONS,
JAMES N. DEAN and
WILLIAM H. DAVISON,

Respondents.

COUNTY OF WAYNE—ss.:

DON M. DICKINSON, the attorney for the respondents in this cause, being duly sworn, deposes and says that the bill of costs hereto annexed was served on this deponent, or on some person in deponent's office, on the 29th day of December, A. D. 1893, and that on the 2nd day of January, 1894, he attended before William May, Clerk of the said Court, pursuant to the notice endorsed on the said bill of costs as served, for the purpose of opposing the taxation thereof.

And deponent further says that he then and there opposed the said taxation, and objected to the following items in the said bill, i. e.:

Copy of record for printer, 3,076 folios at 10c....	\$ 307.60
Printing record, 1,542 pages, at 80c.....	1,233.60
Printing brief, 65 pages, at 80c.....	52.00
Fees of 12 jurymen in Court below, 50 days each at \$2.50.....	1,500.00
Transcript of testimony and proceedings below reduced to writing, 4,795 folios at 20c.....	959.00

on the ground that in the Court below there is no statutory authority to tax such items.

And this deponent further says that he objected to the

taxation of the entire bill of costs on the general ground that all the proceedings below in the above cause were invalid and without jurisdiction, and particularly that the alleged judgment is invalid and that the Court or Judge had no authority or jurisdiction to enter said judgment.

And further deponent saith not.

DON M. DICKINSON.

Subscribed and sworn to before me this 24th day of February, A. D. 1894.

SAMUEL S. HARRIS,

Notary Public, Wayne County, Michigan.

Here follows Petitioner's Bill of Costs and taxation therefor, as set forth on pp. 1362-1364 of this record.

(Endorsed: No. 29,249. Notice of Motion. Motion. Affidavit of Don M. Dickinson, and Bill of Costs. Filed Feby. 7, 1894. Jas. A. Robison, Deputy Clerk.)

STATE OF MICHIGAN—IN THE CIRCUIT COURT FOR
THE COUNTY OF WAYNE:

THE FORT STREET UNION DEPOT
COMPANY,

Petitioner,

vs.

ABSALOM BACKUS, JR.,
A. BACKUS, JR., & SONS,
JAMES N. DEAN and
WILLIAM H. DAVISON,

Respondents.

PRAECIPE FOR WRIT OF EXECUTION.

To the Clerk:

You will please issue writs of fieri facias on the judgment against respondents Absalom Backus, Jr., and A. Backus, Jr., & Sons, as follows:

1. Against Absalom Backus, Jr., for \$2,850.00.
2. Against A. Backus, Jr., & Sons for \$30,293.00.
3. Against Absalom Backus, Jr., and A. Backus, Jr., & Sons for \$4,168.20.

Direct said writs to the Sheriff of the County of Wayne and make them returnable the first Tuesday of June next.
 Detroit, March 26, 1894.

FRED A. BAKER,

Attorney for Petitioner.

(Endorsed: No. 29,249. Filed March 26, '94. Charles C. Kellogg, Deputy Clerk.)

WRIT OF EXECUTION.

STATE OF MICHIGAN, }
 COUNTY OF WAYNE, } ss.

The Circuit Court for the County of Wayne:

To the Sheriff of the County of Wayne, Greeting:

In the Name of the People of the State of Michigan. You are Commanded, That of the goods and chattels of Absalom Backus, Jr., respondent, and for want thereof, then of his lands and tenements in your bailiwick, you cause to be made the sum of two thousand eight hundred and fifty dollars, which the Fort Street Union Depot Company, petitioner, on the 28th day of December, 1893, in the Circuit Court for the County of Wayne aforesaid, at the Court Room of said Court, in the City of Detroit, recovered against him on a reduction of the award of compensation or damages in a certain condemnation suit or proceeding pending in said Court whereof the said respondent stands convicted, as appears of record; and have you that money before the judges of the said Circuit Court aforesaid, at the Court Room of said Court, in the City of Detroit, on Tuesday, the fifth day of June, 1894, then and there to render to the said petitioner, and have you then and there this writ.

Witness, the Honorable Robert E. Frazer, Presiding

Judge of the Circuit Court for the County of Wayne, at the Court Room of said Court, in the City of Detroit, on the 26th day of March, in the year of our Lord one thousand eight hundred and ninety-four.

WM. MAY,

Clerk.

(Seal.)

By CHAS. C. KELLOGG,

Deputy Clerk.

STATE OF MICHIGAN, }
COUNTY OF WAYNE, } ss.

Circuit Court for the County of Wayne.

THE FORT STREET UNION DEPOT
COMPANY,

Petitioner,

vs.

ABSALOM BACKUS, JR.,
A. BACKUS, JR., & SONS,
JAMES N. DEAN and
WILLIAM H. DAVISON,

Respondents.

I do hereby certify that by virtue of the annexed Writ of Execution, issued out of and under the seal of the Circuit Court for the County of Wayne, in the above entitled cause, to me directed and delivered, I have on this ninth day of May, A. D. 1894, levied upon all the following goods, chattels and personal property of Absalom Backus, Jr., that is to say:

Five hundred feet of pine and hardwood lumber now situated in the warehouse of A. Backus, Jr., & Sons, on the north side of Fort street west, at street numbers 420 to 438, in the City of Detroit, in said County.

CHARLES P. COLLINS,

Dated Detroit, May 9th, A. D. 1894.

Sheriff.

By PETER J. CANTO,

Deputy Sheriff.

(Endorsed: No. 29,249. Writ of Fi. Fa. Date of Judgment, Dec. 28, '93. Amount of Judgment, \$2,850.00.)

STATE OF MICHIGAN, }
COUNTY OF WAYNE, } ss.

I, Henry M. Reynolds, Clerk of Wayne County, and Clerk of the Circuit Court for the County of Wayne, do hereby certify that the above and foregoing is a true and correct copy of the Fi. Fa. issued out of said Court in said cause, together with the Sheriff's certificate of levy attached to said Fi. Fa. That I have compared the same with the original, and it is a true transcript therefrom, and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court and County, at Detroit, this 22nd day of August, A. D. 1894.

(Seal.)

HENRY M. REYNOLDS,

Clerk.

By CHAS. C. KELLOGG,

Deputy Clerk.

WRIT OF EXECUTION.

STATE OF MICHIGAN, }
COUNTY OF WAYNE, } ss.

The Circuit Court for the County of Wayne:
To the Sheriff of the County of Wayne, Greeting:

In the Name of the People of the State of Michigan. You are Commanded, That of the goods and chattels of Absalom Backus, Jr., and of A. Backus, Jr., & Sons, a corporation, respondents, and for want thereof, then of their lands and tenements in your bailiwick, you cause to be made the sum of four thousand one hundred and sixty-eight dollars and twenty cents, which the Fort Street Union Depot Company, petitioner, on the 28th day of December, 1893, in the Circuit Court for the County of Wayne aforesaid, at the Court Room of said Court, in the City of

Detroit, recovered against them for its costs and charges by it about a certain condemnation suit in that behalf expended, whereof the said respondents stand convicted, as appears of record; and have you that money before the judges of the said Circuit Court aforesaid, at the Court Room of said Court, in the City of Detroit, on Tuesday, the fifth day of June, 1894, then and there to render to the said petitioner, for its costs aforesaid; and have you then and there this writ.

Witness, the Honorable Robert E. Frazer, Presiding Judge of the Circuit Court for the County of Wayne, at the Court Room of said Court, in the City of Detroit, on the 26th day of March, in the year of our Lord one thousand eight hundred and ninety-four.

WM. MAY,

Clerk.

(Seal.)

By CHAS. C. KELLOGG,

Deputy Clerk.

THE FORT STREET UNION DEPOT
COMPANY,

Petitioner,

vs.

ABSALOM BACKUS, JR.,
A. BACKUS, JR., & SONS,
JAMES N. DEAN and
WILLIAM H. DAVISON,

Respondents.

STATE OF MICHIGAN,

COUNTY OF WAYNE.

} ss.

I do hereby certify that by virtue of the annexed Writ of Execution, issued out of and under the seal of the Circuit Court for the County of Wayne, in the above entitled cause, to me directed, I have on this 9th day of May, A. D. 1894, levied upon all the following goods and chattels and personal property of A. Backus, Jr., & Sons, that is to say:

- 1 Heavy steam engine with automatic cut-off.
- 4 Steam boilers complete.
- 2 Steam pumps and connections.
- 1 Large exhaust injector.
- 1 Large fan and coil.
- 3 Large blowers and shavings connections.
- 1 Knife-grinding machine.
- 1 Upright copper tube heater.
- 1 Upright heater and filter.
- 1 Horizontal condensing and settling boiler.
- 1 Extra heavy drive pulley.
- 1 Large steam drum.
- 5 Woods & Backus 30"x8" 8-roll machines.
- 1 Woods & Backus 24"x8" 8-roll machine.
- 1 Woods & Backus 24" matching machine.
- 2 Woods & Backus 14" flooring machines.
- 1 S. A. Woods heavy moulding machine.
- 3 Extension frame gang rip-sawing machines.
- 3 Power spin-feed rip-sawing machines.
- 1 Heavy band resawing machine.
- 1 Automatic saw-filing machine.
- 1 Four-sided Huntington moulding machine.
- 1 Heavy Jostin & Backus resawing machine.
- 1 Heavy Cornell & Dengler & Backus resawing machine.
- 1 Graham & Backus resawing machine.
- 1 Huntington & Backus resawing machine.
- 10 Backus improved matching machines.
- 8 Backus bumping and gluing machines.
- 30 Backus improved sawing machines.
- 5 Backus improved swing-sawing machines.
- 120 Backus heavy factory trucks.
- 3 Panel or pony planing machines.
- 2 Traveling-bed rip-sawing machines.
- 12 Extra resaws, Backus teeth.

200 M. feet of pine lumber now in planing mill.

150 M. feet of pine lumber now in shed adjoining planing mill.

100 M. feet of pine and hardwood lumber now in dry kilns.

All of said property being situated in and on the planing mill and box factory property of A. Backus, Jr., & Sons, between Fort street west and River street, and between the Michigan Central Railroad and the lots and property of Barbara Steadley and Margaret Specht.

Detroit, May 9th, 1894.

CHARLES P. COLLINS,

Sheriff.

By PETER J. CANTO,

Deputy Sheriff.

(Endorsed: No. 29,249. Writ of Fi. Fa. Date of judgment, Dec. 28, '93. Amount of judgment, \$4,168.20.)

STATE OF MICHIGAN, }
COUNTY OF WAYNE, } ss.

I, Henry M. Reynolds, Clerk of Wayne County, and Clerk of the Circuit Court for the County of Wayne, do hereby certify that the above and foregoing is a true and correct copy of the Fi. Fa. issued out of said Court in said cause, together with the Sheriff's certificate of levy attached to said Fi. Fa. That I have compared the same with the original, and it is a true transcript therefrom, and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court and County, at Detroit, this 22nd day of August, A. D. 1894.

(Seal.)

HENRY M. REYNOLDS,

Clerk.

By CHAS. C. KELLOGG,

Deputy Clerk.

WRIT OF EXECUTION.

STATE OF MICHIGAN, }
COUNTY OF WAYNE, } ss.

The Circuit Court for the County of Wayne:
To the Sheriff of the County of Wayne, Greeting:

In the Name of the People of the State of Michigan. You are Commanded, That of the goods and chattels of A. Backus, Jr., & Sons, a corporation, respondents, and for want thereof, then of its lands and tenements in your bailiwick, you cause to be made the sum of thirty thousand two hundred and ninety-three dollars, which the Fort Street Union Depot Company, petitioner, on the 28th day of December, 1893, in the Circuit Court for the County of Wayne aforesaid, at the Court Room of said Court, in the City of Detroit, recovered against it on a reduction of the award of compensation or damages in a certain condemnation suit or proceeding pending in said Court, whereof the said respondent stands convicted, as appears of record; and have you that money before the judges of the said Circuit Court aforesaid, at the Court Room of said Court, in the City of Detroit, on Tuesday, the fifth day of June, 1894, then and there to render to the said petitioner, and have you then and there this writ.

Witness, the Honorable Robert E. Frazer, Presiding Judge of the Circuit Court of the County of Wayne, at the Court Room of said Court, in the City of Detroit, on the 26th day of March, in the year of our Lord one thousand eight hundred and ninety-four.

WM. MAY,
Clerk.

(Seal.)

By CHAS. C. KELLOGG,
Deputy Clerk.

STATE OF MICHIGAN, }
COUNTY OF WAYNE, } ss.

THE FORT STREET UNION DEPOT
COMPANY,

Petitioner,

vs.

ABSALOM BACKUS, JR.,
A. BACKUS, JR., & SONS,
JAMES N. DEAN and
WILLIAM H. DAVISON,

Respondents.

I do hereby certify that by virtue of the annexed Writ of Execution issued out of and under the seal of the Circuit Court for the County of Wayne in the above entitled cause, to me directed and delivered, I have, on this 9th day of May, A. D. 1894, levied upon all the following goods, chattels and personal property of A. Backus, Jr., & Sons, that is to say:

- 1 Heavy steam engine with automatic cut-off.
- 4 Steam boilers complete.
- 2 Steam pumps and connections.
- 1 Large exhaust injector.
- 1 Large fan and coil.
- 3 Large blowers and shavings connections.
- 1 Knife grinding machine.
- 1 Upright copper tube heater.
- 1 Upright heater and filter.
- 1 Horizontal condensing and settling boiler.
- 1 Extra heavy drive pulley.
- 1 Large steam drum.
- 1 Woods & Backus 24"x8" 8-roll machine.
- 1 Woods & Backus 24" matching machine.
- 5 Woods & Backus 30"x8" 8-roll machines.

- 2 Woods & Backus 14" flooring machine.
- 1 S. A. Woods heavy moulding machine.
- 3 Extension-frame gang rip-sawing machines.
- 3 Power spin-feed rip-sawing machines.
- 1 Heavy band resawing machine.
- 1 Automatic saw-filing machine.
- 1 Four-sided Huntington moulding machine.
- 1 Heavy Jostin & Backus resawing machine.
- 1 Heavy Cornell & Dangler & Backus resawing machine.
- 1 Graham & Backus resawing machine.
- 1 Huntington & Backus resawing machine.
- 10 Backus improved matching machines.
- 8 Backus bumping and gluing machines.
- 30 Backus improved sawing machines.
- 5 Backus improved swing-sawing machines.
- 120 Backus heavy factory trucks.
- 3 Panel or pony planing machines.
- 2 Traveling-bed rip-sawing machines.
- 12 Extra resaws, Backus teeth.
- 200 M. feet of pine lumber now in planing mill.
- 150 M. feet of pine lumber now in shed adjoining planing mill.
- 100 M. feet of pine and hardwood lumber now in dry kilns.

All of said property being situated in and on the planing mill and box factory property of A. Backus, Jr., & Sons, between Fort street west and River street, and between the Michigan Central Railroad and the lots and property of Barbara Steadly and Margaret Specht.

Detroit, May 9th, 1894.

CHARLES P. COLLINS,

Sheriff.

By PETER J. CANTO,

Deputy Sheriff.

(Endorsed: No. 29,249. Writ of Fi. Fa. Date of judgment, Dec. 28, '93. Amount of judgment, \$30,293.00.)

STATE OF MICHIGAN, }
COUNTY OF WAYNE. } ss.

I, Henry M. Reynolds, Clerk of Wayne County, and Clerk of the Circuit Court for the County of Wayne, do hereby certify that the above and foregoing is a true and correct copy of the Fi. Fa. issued out of said Court in said cause, together with the Sheriff's certificate of levy attached to said Fi. Fa. That I have compared the same with the original, and it is a true transcript therefrom, and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court and County, at Detroit, this 22nd day of August, A. D. 1894.

(Seal.)

HENRY M. REYNOLDS,

Clerk.

By CHAS. C. KELLOGG,

Deputy Clerk.

PETITION FOR CERTIORARI.

To the Supreme Court of the State of Michigan:

The petition of Absalom Backus, Jr., who is a citizen of the State of Michigan, and a person residing in the City of Detroit, in said State, and of A. Backus, Jr., & Sons, which is a corporation created and existing under the laws of the State of Michigan, having its principal office and carrying on its business in said city, respectfully shows:

That on the 24th day of January, 1891, the Fort Street Union Depot Company, a corporation created and existing under the laws of the State of Michigan, filed its petition in the Circuit Court for the County of Wayne, under and in form and in accordance with Chapter 93 of Howell's Annotated Statutes, entitled "Union Railroad Station and

Depot Companies," as amended; and therein and thereby initiated proceedings under such chapter against your said petitioners to build and operate a viaduct or elevated railroad, and a viaduct for teams, on River street, in said City of Detroit, in front of and contiguous to the property known as the Backus planing mill, having a frontage on River street of 238 6-100 feet, and extending back to Fort street, the said property being owned in fee by your petitioner, Absalom Backus, Jr., and leased for the purpose of a planing mill by your petitioners, A. Backus, Jr., & Sons; that such proceedings were had upon said petition under said chapter, that on the 25th day of February, 1891, a jury of twelve (12) freeholders, under the direction of Honorable George Gartner, Circuit Judge, were impaneled and sworn to ascertain the public necessity for taking said real estate, property, franchise and easements for the purpose of the said petitioner, and the public use and benefit thereof, and to appraise and determine the damages or compensation to be allowed to your petitioners therefor.

That on the 2nd day of March, 1891, the trial of said issue commenced and continued from day to day until March the 18th, 1891, when the jury reported that they were unable to agree either on the question of necessity or on the amount of compensation.

That afterwards, on June 4, 1891, a second jury was impaneled and sworn, under the direction of said Judge, in accordance with the prayer of said petition of the said The Fort Street Union Depot Company, and the said jury proceeded to hear proofs and testimony thereupon from day to day until the 16th day of July, 1891, when the said jury rendered a verdict and finding that the taking of said property was for the public use and benefit and was a public necessity, and assessing the damages of your petitioners as follows:

Absalom Backus, Jr., seventeen thousand eight hundred

and fifty dollars (\$17,850); and A. Backus, Jr., & Sons, seventy-eight thousand two hundred and ninety-three dollars (\$78,293),

That on August 15th, 1891, the said The Fort Street Union Depot Company filed a motion for a new trial in the said Circuit Court, which was duly heard and argued by counsel, and having been considered by the Court, the Honorable George Gartner, Circuit Judge, an order was assumed to be entered by the said Circuit Judge, setting aside the award and ordering a new trial.

That afterwards the Supreme Court, in the case reported in 89 Mich., at page 210, granted a mandamus compelling the said Circuit Judge to vacate and set aside the said order for a new trial and confirm the award, which the Circuit Judge subsequently did on or about the 5th day of December, 1891; and thereupon the said The Fort Street Union Depot Company took an appeal in the premises to this the Supreme Court.

That afterwards, to wit, on the 23rd day of January, 1892, the said The Fort Street Union Depot Company paid to these petitioners the amount in full of the award of said jury as aforesaid, unconditionally, and entered into full possession of the property, franchise, easements and rights of these petitioners, described in said petition, and have since maintained and operated their lines of railroad over the same, and have maintained the viaduct for teams over the same.

That on the 30th day of January, 1892, these petitioners moved this Court, as appears by the files and records of said Court, that the appeal should be dismissed because of the said payments of the said awards, and the taking possession of the property by the said The Fort Street Union Depot Company.

That afterwards, on the 4th day of March, 1892, the appeal of the said The Fort Street Union Depot Company came on to be heard in the case reported in 92 Mich., at

page 33, whereupon said Supreme Court set aside the award of damages, but did not set aside the verdict of the jury as to the public necessity for taking the property, and did order the question as to the amount of damages to be submitted to a new jury to be impaneled in the Circuit Court for the County of Wayne, with costs to the said petitioner The Fort Street Union Depot Company.

The decision of this Court in the case reported in 89 Mich., page 209, aforesaid, had not, in the meantime, been ordered for re-argument, and in the hearing in the case reported as aforesaid in 92 Mich., the Chief Justice of the Court, when counsel for respondents were about to argue the question as to whether the property of the Michigan Central Railway Company could be taken, and as to whether it was error below for counsel for respondents to argue that the said Michigan Central Railway Company's property could be taken, stopped that part of the argument of the said counsel, and stated that this Court did not desire to hear argument on that question because the verdict of the jury had been unfavorable to respondents on the question of necessity; but nevertheless this Court, as appears in and by its said opinion, reported in 92 Mich., did, without having offered to hear counsel for these petitioners, consider that question, and did decide it adversely to the respondents.

That afterwards before the Circuit Court for the County of Wayne (Judge Gartner) the said The Fort Street Union Depot Company did file a motion for an order to strike, summon and impanel a jury for the trial of the question of damages in the matter in pursuance of the order and direction of the Supreme Court; which came on for hearing on April 17, 1893, whereupon your petitioners did file in the Court and cause a paper writing words and figures following, to wit:

(Then follows respondents' protest and plea to jurisdiction set forth on pp. 31-36 of this record.)

In the form of a plea and protest, which was overruled by the said Circuit Court, and the impaneling of said jury proceeded with, notwithstanding your petitioners' said exceptions and protest.

That afterwards, to wit: On the 5th day of September, 1893, before the striking or impaneling of the jury, your petitioners' counsel protested in the presence of the Court against a re-trial for the reasons which he then and there stated, as hereinbefore set forth, and caused a record to be entered on the proceedings of the court of the said protest. Also that before the jury was sworn, your petitioners, through their counsel, protested against and objected to the sitting of Judge Gartner in the case; whereupon all said protests and objections were overruled, and the opening of said counsel for the said The Fort Street Union Depot Company and the testimony of witnesses proceeded with, the said Judge Gartner sitting and presiding and ruling in every respect as in a trial at common law; your petitioners objecting at every stage and protesting against the rulings of the court and against his presence, all in a respectful and decorous manner and language and without any offense to the said Judge. That the said hearing proceeded until October 11, 1893, when the counsel for the said The Fort Street Union Depot Company announced that petitioner rested its case; whereupon your petitioners re-stated the objections and protested against being called upon to go into their case for the defense, which objection and protest were again overruled, and the Court stated that he proposed to sit in the case precisely as a Judge would sit in a trial at common law, and further that "the jury will determine those questions that I will submit to them, and I will see that my ruling is carried out by the jury also;" to all of which rulings and language of the Court and each of them, your petitioners'

counsel took exceptions; and still reserving their protests and objections, your petitioners proceeded to introduce testimony as to the damages which they had suffered by reason of the taking of the property as aforesaid; and especially the injury to the profits of their business, and the destruction of the facilities for carrying on the planing mill business; and the hearing was continued from day to day, and the taking of proofs and testimony until the 6th day of November, 1893, when the Court (Judge Gartner) proceeded to charge the jury as in a trial at common law, and in his charge did erroneously instruct the jury, as petitioners allege, in the particulars hereinafter more fully set forth, to which petitioners' counsel did then and there to each of said rulings, except.

The case having been given to the jury as aforesaid by the said Judge, the said jury proceeded to return a verdict as follows:

Assessing the damages of Absalom Backus, Jr., at the sum of \$15,000 and the damages of A. Backus, Jr., & Sons at \$48,000; whereupon the said The Fort Street Union Depot Company did move the Court before the said Judge Gartner for (1) a judgment against Absalom Backus, Jr., for \$2,850 with interest from the 23rd of January, 1892; (2) judgment against A. Backus, Jr., & Sons for \$30,293 with interest from the 23rd day of January, 1892; and (3) judgment against A. Backus, Jr., and A. Backus, Jr., & Sons for the costs of the second trial of this cause including all costs of appeal upon the statute, etc.; whereupon these petitioners through their counsel appeared before said Judge and filed the following objections and plea to the entry of any judgment:

(Then follows respondents' objections and plea to the entry of any judgment as set forth on pp. 52-57 of this record.)

Your petitioners further show that all the rulings embraced in the foregoing objections and therein referred

to, were made by the said Circuit Judge, Honorable George Gartner, and exceptions were duly taken thereto by your petitioners' counsel; and that all the objections therein stated of errors in the proceedings were based upon the facts appearing in the trial and on the record as therein stated; and that the facts as to the actions of the jurors as stated in objections from XIII. to XIX. inclusive were fully supported by affidavits filed in the cause; and that the paper writing referred to as Exhibit A in objection XVIII. was the paper writing filed before the impaneling of the jury in the words and figures hereinbefore first set out.

Your petitioners further show to the Court that on the said hearing your petitioners argued to the said Court that there was no power or jurisdiction in the Court under the statute to enter up judgment on said motion, and further and specifically argued that there was no power or jurisdiction in the Court to order an execution, and that an order for execution was no part of a judgment entry.

That the said Court overruled all the said objections, including the last two, and did proceed on the 28th day of December, 1893, to enter up judgment and order execution in the words and figures following, to wit:

(Then follows the judgment set forth in pp. 63-65 of this record.)

And thereupon the said Court did proceed, against the argument and objections of your petitioners' counsel, to tax the costs of the said The Fort Street Union Depot Company at the amounts and figures set out in the paper writing marked Exhibit A, hereto annexed; and thereupon, thereafter, the Court did issue executions against the property of your petitioner Absalom Backus, Jr., for the sum of \$2,850; and against your petitioners A. Backus, Jr., & Sons for the sum of \$30,293, and against both of your petitioners for the sum of \$4,168, costs; which said

executions were addressed to the Sheriff of the County of Wayne, who thereupon levied upon and seized the personal property and chattels of A. Backus, Jr., & Sons, as follows: All of their steam engines, boilers and machines in their planing mill and all of their lumber, manufactured and unmanufactured, in the City of Detroit in said County of Wayne, of the value of one hundred thousand dollars (\$100,000) and upwards, and did levy upon and seize the property of your petitioner Absalom Backus, Jr., as follows: 500,000 feet of pine and hardwood lumber, and other personal property of the value of \$10,000 and upwards; and all of the said property of your petitioners the said sheriff still holds and threatens to sell on said executions.

All of the said proceedings related in the premises appear by the files and records of the Circuit Court for the County of Wayne and of this Court, and your petitioners allege manifest errors in the said proceedings, as related in and by their specific protests, objections and exceptions as hereinbefore set forth, and they allege as errors in addition to and supplementary to those set out in the foregoing petition in and by the proceedings they have been also denied by the State of Michigan the equal protection of the laws, contrary to the true intent and meaning of section one of article fourteen of amendments to the constitution of the United States, in that in the aforesaid opinion of the Supreme Court that the judgment of the Supreme Court of this State aforesaid reported in 89 Mich., page 209, was set aside and held for naught by the said Court without an order for re-argument and without notice to the petitioners or their counsel that re-argument was desired, and without re-argument in their behalf; and in that the said Supreme Court held as error the argument of the counsel for the said petitioners before the jury that the property of the Michigan Central Railroad

Company could be taken under the power of eminent domain, without notifying the counsel for your petitioners that they desired to hear no argument as to whether the property could be taken or as to whether it was error to make the argument that it could be taken; and also that the taking of your petitioners' property under the alleged executions, has deprived your petitioners of their property without due process of law and in violation of section one article 14 of the amendments to the Constitution of the United States.

That all the proceedings in the premises were purely statutory, and that there was no statutory authority for judgment against these respondents, and no pretense of statutory authority for the issue of the said executions.

Finally, they further allege that the provision of the statute authorizing The Fort Street Union Depot Company to condemn private property for public use was unconstitutional and void.

Wherefore they pray that the writ of certiorari may issue from this Court, directed to the Circuit Court for the County of Wayne for the sending up and review of all the proceedings in the premises and for the correction of the errors aforesaid.

ABSALOM BACKUS, JR.,
A. BACKUS, JR., & SONS.

By NEWTON D. BACKUS, Sec. and Treas.

STATE OF MICHIGAN, }
COUNTY OF WAYNE, } ss.

NEWTON D. BACKUS, being duly sworn, upon his oath saith: That he is secretary and treasurer of the corporation known under the name and style of A. Backus, Jr., & Sons, and has signed the foregoing petition in the name of said corporation by the express direction and authority of its board of directors, and he makes this

verification in behalf of said corporation and in behalf of A. Backus, Jr., whose signature is appended to the foregoing petition. That he knows the contents thereof, and that the statements of facts contained therein are true so far as stated of the own knowledge of petitioners therein, and that the statements therein made on information and belief or advice and belief are true to the best of his knowledge, advice, information and belief.

A. BACKUS JR., & SONS.

By NEWTON D. BACKUS, Sec. and Treas.

Subscribed and sworn to before me this 26th day of June, A. D. 1894.

G. A. WILLIAMS,

Notary Public, Wayne County, Michigan.

STATE OF MICHIGAN—IN THE CIRCUIT COURT FOR
THE COUNTY OF WAYNE:

THE FORT STREET UNION DEPOT
COMPANY,

vs.

ABSALOM BACKUS, JR.,
A. BACKUS, JR., & SONS,
JAMES N. DEAN and
WILLIAM H. DAVISON,

Respondents.

STATE OF MICHIGAN, }
COUNTY OF WAYNE, } ss.

Benjamin S. Warren, being duly sworn, says that he is law clerk in the office of Dickinson, Thurber & Stevenson, attorneys for the above named Absalom Backus, Jr., A. Backus, Jr., & Sons, James N. Dean and William H. Davison, and has charge of the preparation of the record of certiorari removing said cause to the Supreme Court. That owing to the voluminous character of the record and the absence from the files of pleadings and papers in the case, it is impossible to prepare the record that it may be

filed on August 3d, the return day of the writ of certiorari, and that twenty days' time will be necessary to get all the papers in the case together and have the proper transcripts thereof made.

BENJAMIN S. WARREN.

Subscribed and sworn to before me this 2d day of August, A. D. 1894.

BENJAMIN F. BRISCOE,

Notary Public, Wayne County, Michigan.

At a session of the Circuit Court for the County of Wayne and State of Michigan, held at the Circuit Court rooms in the City of Detroit, on the 2d day of August, A. D. 1894.

Present: Hon George S. Hosmer, Hon. Robert E. Frazer, Hon. William L. Carpenter, Hon. J. W. Donovan, Hon. Willard M. Lillibridge.

THE FORT STREET UNION DEPOT
COMPANY,

vs.

ABSALOM BACKUS, JR., et al.

Before Hon. J. W. Donovan, Circuit Judge.

In this cause it is ordered that the time for the return of the writ of certiorari and record in this cause be and the same is hereby extended from the 3d day of August, the return day of said writ, to the 23d day of August next.

(Signed)

J. W. DONOVAN,

Circuit Judge.

**IN THE NAME OF THE PEOPLE OF THE STATE OF
MICHIGAN.**

(Seal.)

To Judges of the Circuit Court for the County of Wayne:
We, being willing, for certain causes, that it should be

certified to our Supreme Court what proceedings have been had before you, and what has been done by you in the case lately pending in said Circuit Court wherein The Fort Street Union Depot Company is petitioner, and Absalom Backus, Jr., Absalom Backus, Jr., & Sons, and James N. Dean are respondents,

Do, therefore, command you, that you distinctly and openly certify the records and proceedings in said matter, to the said Supreme Court, before the Justices thereof, that they may have them at the Supreme Court room, in the Capitol, in the City of Lansing, on the 3d day of August, A. D. 1894, that said Court may cause to be done thereupon what of right ought to be done, and have you then and there this writ.

Witness, the Honorable John W. McGrath, Chief Justice of our Supreme Court, at Lansing, this 28th day of June, in the year of our Lord one thousand eight hundred and ninety-four.

CHARLES C. HOPKINS,
Clerk Supreme Court.

I hereby certify, that the foregoing writ was duly allowed by Honorable John W. McGrath, Chief Justice of the Supreme Court of Michigan, on the 27th day of June, 1894.

CHARLES C. HOPKINS,
Clerk.

(Seal.)

To the Supreme Court of the State of Michigan:

The execution of the within writ appears by the transcript of record hereto annexed.

August 22d, 1894.

J. W. DONOVAN,
Presiding Circuit Judge.

Endorsed: No. 14268. Writ of certiorari. Filed August 23d, 1894.

CHARLES C. HOPKINS,
Clerk Supreme Court.

STATE OF MICHIGAN—IN THE CIRCUIT COURT FOR
THE COUNTY OF WAYNE:

ABSALOM BACKUS, JR., and
A. BACKUS, JR., & SONS,
Plaintiffs in Error and Respondents
below,

vs.

THE FORT STREET UNION DEPOT
COMPANY,
Defendant in Error and Petitioner below.

ASSIGNMENT OF ERRORS.

In Certiorari:

And now come the said respondents, and assign errors in the record and proceedings certified to this Court in this cause.

I.

In this: In overruling the pleading, objections and protests in writing filed in the matter in the Circuit Court for the County of Wayne by the respondents below against a third trial of the matter, and the jurisdiction of the Court, on April 17th, 1893, before the jury was summoned, struck, sworn or impaneled.

II.

In this: In overruling the several objections and protests of the respondents below to the jurisdiction of the Court and of that tribunal at every stage of the proceedings.

III.

In this: That in and by the Constitution of the State of Michigan, in the specific provisions of Article XV., Section 15, and Article XVIII., Section 2, of said Constitution, as uniformly construed by the courts of the State, when private property is sought to be taken for the use and benefit of the public; the necessity for using such property and the just compensation to be made therefor in such cases, must be ascertained by a jury of twelve freeholders, residing in the vicinity of the property, or by not less than three commissioners, appointed by a court of record, as shall be prescribed by law, without the intervention of any judge or other person as a part of said tribunals or either of them, and without the constraint, influence or direction of any such judge or person. Whereas in these records and proceedings the discretion of the constitutional tribunal was interfered with and constrained by a judge of the Circuit Court for the County of Wayne, by setting aside the finding of the constitutional tribunal, and ordering a new trial and the power of the said Circuit Judge to do this indefinitely until the verdict and report of a jury should satisfy his judgment, was asserted and maintained by the said judge and was therein sustained by the court of last resort of this State, whereby as plaintiffs in error aver the proceedings were without jurisdiction, and they, persons within the jurisdiction of the State, were denied the equal protection of the laws.

of the State, contrary to Article XIV., Section 1, of the Amendments to the Constitution of the United States.

IV.

In this: That there having been one verdict and report of a jury finding the necessity of the taking of the property and the damages to be awarded the respondents therefor, and the petitioner below having entered upon, taken possession and in all respects to the limits of the prayer of its petition, built and maintained its railroads and its culverts upon the property of the respondents sought to be condemned, and having paid to the respondents unconditionally the award of said jury, under the constitution and laws of the State of Michigan, and as uniformly construed by the courts of said State, except in this case, there was no jurisdiction in any tribunal to prosecute a proceeding for condemnation under the power of eminent domain thereafter on the part of the said petitioner and defendant in error. Whereas in this case, the power to so proceed was sustained, and plaintiffs in error aver that all such proceedings are without jurisdiction and void and as sustained by the courts of the State, deprive the plaintiffs in error and respondents below, persons within the jurisdiction of the State, of the equal protection of the laws of the State, contrary to said provision of the Constitution of the United States.

V.

In this: That as the title to the property sought to be condemned passed to the said petitioner below, and the title to the said money passed to the said respondents, the taking possession of the property by the petitioner and the proceedings are without jurisdiction, and the recovery

of any portion of said money from the respondents and the seizure of their property thereunder, would be and are depriving plaintiffs in error and respondents below of their property without due process of law, contrary to said provision of the Constitution of the United States.

VI.

In this: That in and by the said proceedings the questions of the necessity for using the property, and the just compensation to be made therefor, were not left to a jury of twelve freeholders on the demand for a jury, but were left to two juries of twelve each, the one, according to the proceedings, passing upon the question of necessity, and the other upon the question of compensation. Whereas the same jury, under the Constitution of the State, one jury of twelve freeholders, must pass upon both questions, and that in this the Constitution of the State, as uniformly construed by the courts, has been violated, and in this regard the plaintiffs in error and respondents below have been denied the equal protection of the laws of the State of Michigan.

VII.

In this: That in the condemnation proceedings where a business plant was sought to be condemned for public use, the damages sought to be recovered, by the ruling of this Court and of the Court below, were held to be confined to the injury to the realty and the buildings thereon, and just compensation for interruption of business and to the business stand, and for diminution of business facilities, was denied, contrary to the said provisions of the Constitution of the State of Michigan, and the uniform construc-

tion in such cases by the courts of the State in other cases, and contrary to the said provision of the Constitution of the United States.

VIII.

In this: That the verdict of the third jury was never filed or entered in the cause.

IX.

In this: That the court below had no jurisdiction or authority to enter judgment against Absalom Backus, Jr., for \$2,850.00, and against A. Backus, Jr., & Sons for \$30,293.00, and that the provisions in said statute referred to in the said motion for the said judgments and in accordance with which said motion is alleged to have been made, were unconstitutional and void.

X.

In this: That as the consideration of the question of necessity for the alleged improvements set forth in the petition was expressly excluded from the consideration of the jury by the Court, the proceedings in said third and last trial upon the single question of damages only was void and of no effect.

XI.

In this: That the Circuit Judge, Hon. George Gartner, did sit with the said jury on said third trial from the beginning of the trial of the cause to its close in all respects

as in a trial at common law, and did hold and maintain that his function in that regard was not advisory, but that the said judge had the power to rule upon and admit or exclude testimony and did rule upon and admit or exclude testimony, and to direct and instruct the jury, and did so direct and instruct the jury, and did state to the jury in that connection that he would not only instruct them, but that he would see that his instructions were carried out; in direct violation of the Constitution of the State and of the construction of the said Constitution by the courts of last resort of the State in all other cases, thereby denying to the respondents below, persons within the jurisdiction of the State of Michigan, the equal protection of the laws of said State, and in violation of the true intent and meaning of the said provision of the Constitution of the United States.

XII.

In this: That the Circuit Judge, Hon. George Gartner, overruled, under exception, the first objection of the respondents to the entry of the said judgments, or either of them.

XIII.

In this: That the Circuit Judge, Hon. George Gartner, overruled, under exception, the second objection of the respondents to the entry of the said judgments, or either of them.

XIV.

In this: That the Circuit Judge, Hon. George Gartner,

overruled, under exception, the third objection of the respondents to the entry of the said judgments, or either of them.

XV.

In this: That the Circuit Judge, Hon. George Gartner, overruled, under exception, the fourth objection of the respondents to the entry of the said judgments, or either of them.

XVI.

In this: That the Circuit Judge, Hon. George Gartner, overruled, under exception, the fifth objection of the respondents to the entry of the said judgments, or either of them.

XVII.

In this: That the Circuit Judge, Hon. George Gartner, overruled, under exception, the sixth objection of the respondents to the entry of the said judgments, or either of them.

XVIII.

In this: That the Circuit Judge, Hon. George Gartner, overruled, under exception, the seventh objection of the respondents to the entry of the said judgments, or either of them.

XIX.

In this: That the Circuit Judge, Hon. George Gartner, overruled, under exception, the eighth objection of the respondents to the entry of the said judgments, or either of them.

XX.

In this: That the Circuit Judge, Hon. George Gartner, overruled, under exception, the ninth objection of the respondents to the entry of the said judgments, or either of them.

XXI.

In this: That the Circuit Judge, Hon. George Gartner, overruled, under exception, the tenth objection of the respondents to the entry of the said judgments, or either of them.

XXII.

In this: That the Circuit Judge, Hon. George Gartner, overruled, under exception, the eleventh objection of the respondents to the entry of the said judgments, or either of them.

XXIII.

In this: That the Circuit Judge, Hon. George Gartner, overruled, under exception, the twelfth objection of the respondents to the entry of the said judgments, or either of them.

XXIV.

In this: That the Circuit Judge, Hon. George Gartner, overruled, under exception, the thirteenth objection of the respondents to the entry of the said judgments, or either of them.

XXV.

In this: That the Circuit Judge, Hon. George Gartner, overruled, under exception, the fourteenth objection of the respondents to the entry of the said judgments, or either of them.

XXVI.

In this: That the Circuit Judge, Hon. George Gartner, overruled, under exception, the fifteenth objection of the respondents to the entry of the said judgments, or either of them.

XXVII.

In this: That the Circuit Judge, Hon. George Gartner, overruled, under exception, the sixteenth objection of the respondents to the entry of the said judgments, or either of them.

XXVIII.

In this: That the Circuit Judge, Hon. George Gartner, overruled, under exception, the seventeenth objection of the respondents to the entry of the said judgments, or either of them.

XXIX.

In this: That the Circuit Judge, Hon. George Gartner, overruled, under exception, the eighteenth objection of the respondents to the entry of the said judgments, or either of them.

XXX.

In this: That the said Circuit Judge ordered and directed the issue of an execution without authority of law, after objection and full argument against the order by the counsel for the respondents:

XXXI.

In this: That the property of these respondents, to wit: of the respondents A. Backus, Jr., & Sons of the value of one hundred thousand dollars (\$100,000.00) and upwards, and the property of Absalom Backus, Jr., of the value of ten thousand dollars (\$10,000.00) and upwards, had been seized and taken by the Sheriff of the County of Wayne under the said execution, directed as aforesaid to be issued by the said Circuit Judge, and therein and thereby they, and each of them, have been deprived of their property without due process of law, contrary to the said provision of the Constitution of the United States.

XXXII.

In this: That costs of the Court below and of this Court on appeal were awarded by the said Circuit Judge against the plaintiffs in error and respondents below, and execution issued therefor, when in and by the statute in such

case made and provided, no costs could be awarded except against the defendant in error and petitioner below as the party appealing.

XXXIII.

In this: That the act of the Legislature of the State of Michigan under which the said petition was filed by said petitioners, was unconstitutional and void, because the proceedings in the third trial were had under a decision of this Court in a case reported in the 92d Mich. Reports, commencing at page 33, without having ordered for re-argument the case reported in the 89th Mich. Reports at page 209, and without hearing any re-argument thereon, and that on the hearing of the case aforesaid reported in the said 92d Mich. Reports, the Chief Justice of the Court, when counsel for respondents were about to argue the question as to whether the property of the Michigan Central Railroad could be taken, and as to whether it was error below for counsel for respondents to argue that the said Michigan Central Railroad Company's property could be taken, stopped that part of the argument of the said counsel for the respondents, and stated that this Court did not desire to hear argument on that question because the verdict of the jury had been unfavorable to respondents on the question of necessity; but nevertheless, this Court did, without having offered to hear counsel for petitioners, decide the same adversely to the respondents; contrary to the uniform practice and rulings of this Court in all other cases than this, thereby depriving the plaintiffs in error and respondents below of the equal protection of the laws, in violation of the true intent and meaning of the said provision of the Constitution of the United States.

DICKINSON, THURBER & STEVENSON,
Attorneys for Plaintiffs in Error and Respondents below.

JUDGMENTS AFFIRMED.

The case on certiorari was argued in the Supreme Court of Michigan at the October term, 1894, and on January 8th, 1895, the judgments in favor of The Fort Street Union Depot Co. and against Absalom Backus, Jr., and A. Backus, Jr., & Sons, were duly affirmed by that Court.

Backus vs. Fort Street Union Depot Co., 61 N. W. Rep., p. 787.

UNITED STATES OF AMERICA—ss:

To The Fort Street Union Depot Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the Supreme Court of the State of Michigan, wherein A. Backus, Jr., & Sons and Absalom Backus, Jr., are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable John M. Harlan, Associate Justice of the Supreme Court of the United States, this 15th day of March, in the year of our Lord one thousand eight hundred and ninety-five.

(Signed) JOHN M. HARLAN,
Associate Justice of the Supreme Court of the United States.

UNITED STATES OF AMERICA.
SUPREME COURT OF THE UNITED STATES.

A. BACKUS, JR., & SONS, and
ABSALOM BACKUS, JR.,

Plaintiffs in Error,

VS.

THE FORT STREET UNION DEPOT
COMPANY,

Defendant in Error.

Error to Supreme Court of
Michigan.

To the Clerk of the Supreme Court of the United States:

Sir—You will please enter my appearance as the attorney and counsel of the defendant in error in the above entitled cause.

Detroit, April 8, 1895.

FRED. A. BAKER,

Attorney for Defendant in Error.

UNITED STATES OF AMERICA.
SUPREME COURT OF THE UNITED STATES.

A. BACKUS, JR., & SONS, and
ABSALOM BACKUS, JR.,

Plaintiffs in Error,

vs.

THE FORT STREET UNION DEPOT
COMPANY,

Defendant in Error.

Error to Supreme Court of
Michigan.

To the Clerk of the Supreme Court of the United States:

Sir—You will please enter my appearance as the attorney and counsel of the defendant in error in the above entitled cause.

Detroit, April 8, 1895.

FRED. A. BAKER,
Attorney for Defendant in Error.